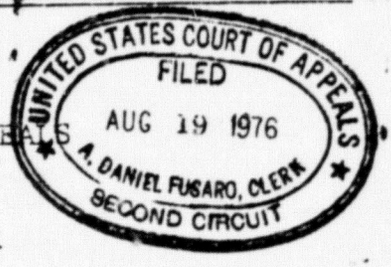
United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-7356



IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE:

MASTER KEY ANTITRUST LITIGATION

EXXON CORPORATION, ESSO EASTERN, INC., EXXON PRODUCTION RESEARCH COMPANY, ESSO EXPLORATION, INC., ESSO INTER-AMERICA, INC., JAMVEN, INC., GILBARCO, INC., EXXON NUCLEAR COMPANY, INC., and EXXON RESEARCH & ENGINEERING COMPANY,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX - VOLUME II

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
	:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	:	
AMHERST LEASING CORPORATION, et al.	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 14,234
EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY and ILCO CORPORATION,	:	
Defendants.	:	

AFFIDAVIT OF MAILING OF LEGAL NOTICE TO MOTEL, HOTEL, OFFICE BUILDING AND APARTMENT BUILDING CLASS

COMMONWEALTH OF PENNSYLVANIA :
SS:
COUNTY OF PHILADELPHIA :

H. LADDIE MONTAGUE, JR., being first duly sworn according to law deposes and says:

1. I am a member of David Berger, P.A., Attorneys at Law, 1622 Locust Street, counsel for class representative plaintiffs in the matter entitled Amherst Leasing Corporation v. Emhart Corp., Civ. No. 14,234 (D.Conn.) and Co-Liaison Counsel.

2. On March 29, 1976, I caused to be mailed 17,729 copies of a "Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware", as provided in and pursuant to this Court's Order of March 3, 1976. A true and correct copy of the Notice mailed is annexed hereto as Exhibit "A".

3. Enclosed with the Notices mailed only to the members of the Building Owners and Managers Association (March 3, 1976 Order, ¶5(b)) was a letter approved by the Court on March 25, 1976, a copy of which letter is annexed hereto as Exhibit "B".

4. The aforedescribed Notices were mailed first class mail, postage prepaid, to those entities described in paragraph 5(a) and (b) of this Court's Order of March 3, 1976. Because of their bulk, a list of these entities is being submitted herewith under separate cover as Exhibit "C".

5. Approximately 3,000 Notices were returned as undeliverable. The names of those class members who are listed in Exhibit "C" but whose notices were returned as undeliverable have been crossed out.

H. LADDIE MONTAGUE, JR.

Sworn to and Subscribed
Before Me This 14th day
of May, 1976.

Notary Public)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
MASTER KEY ANTITRUST LITIGATION)

M.D.L. DOCKET NO. 45

NOTICE OF CLASS ACTION AND PARTIAL SETTLEMENT WITH RESPECT TO LITIGATION INVOLVING FINISH HARDWARE

TO: ALL STATE, COUNTY AND LOCAL GOVERNMENTAL ENTITIES AND PUBLIC AND PRIVATE BUILDER-OWNERS OF STRUCTURES HAVING MASTER KEY SYSTEMS INSTALLED SINCE 1950

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

Seventeen civil actions for treble damages have been filed against the EATON CORPORATION, EMHART CORPORATION, SARGENT & COMPANY and ILCO CORPORATION (the "defendants"), which have been consolidated for trial before the United States District Court in Hartford, Connecticut. These actions were certified as class actions on May 27, 1975. Thereafter, the representative plantiffs and one of the defendants, Emhart Corporation, presented a settlement agreement to the court for its approval pursuant to Rule 23(e). The court has authorized notice to all plaintiffs, intervenors and class members of the settlement and the conduct of hearings thereon.

A. The Litigation

The complaints in these lawsuits allege that since 1950 defendants have violated the federal antitrust laws by agreeing and engaging in concerted action to fix and maintain prices of finish hardware at non-competitive levels and to restrain competition among their dealers in the sale of finish hardware for construction projects with master key systems. The complaints further charge that defendants conspired among themselves and with their dealers to allocate territories, customers and jobs, and to rig bids to contractors, and that as a result of this alleged illegal action, public entities and certain private builder-owners have paid higher prices than they would have paid in a freely competitive market for finish hardware installed on public buildings, including schools, hospitals and universities, and on certain commercial buildings, namely, hotels, motels, office buildings and apartment houses. It is alleged that the illegal conduct inflated the prices of all finish hardware regardless of the local dealer through whom the hardware was sold. The defendants sell finish hardware under the following brand names: RUSSWIN, CORBIN, SARGENT, LOCKWOOD and YALE. Each of the defendants denies these allegations and contends that their conduct has been lawful in all respects.

The District Court has not passed on any contentions of the parties, and therefore no implications should be drawn from the sending of this notice regarding the merits of the litigation.

B. The Classes

On May 27, 1975, the District Court ruled that the pending lawsuits could be maintained on behalf of the following classes and that notice should be given to the entities included within the respective classes.

1. The state-wide governmental classes consisting of all counties, municipalities, and other local and regional governmental subdivisions, and all public agencies, authorities, departments and institutions that built structures having master key systems with contract hardware manufactured by any of the defendants in the following states:

Illinois	West Virginia	Connecticut
Indiana	Wisconsin	Florida
Michigan	Colorado	Kansas
Minnesota	Arizona	New York
Pennsylvania	California	Ohio

2. The national governmental class represented by the City of Philadelphia and including all governmental and political subdivisions, and all public agencies, authorities, departments and institutions throughout the United States, with the exception of those states and public entities listed in the foregoing paragraph, that built structures having master key systems with contract hardware manufactured by any of the defendants and that are not included in the state-wide governmental class actions.

3. The private builder-owner class represented by plaintiffs in Amherst Leasing Corp. v. Emhart Corp., et al, Civil No. 14,234, and consisting of all private persons and firms in the United States, who built for their own account or had built for them, whether for their own use, rental or sale, hotels, motels, office buildings and apartment buildings having master key systems with contract hardware manufactured by any of the defendants.

C. Partial Settlement with Emhart Corporation

The Emhart Corporation, one of the defendants, has agreed to pay the aggregate amount of Seven Million Five Hundred Thousand Dollars ($7,500,000) in final settlement of all claims against Emhart involved in this litigation including the claims of plaintiffs, intervenors and class members. This sum was deposited in an escrow account in August 1975, and invested in interest-bearing securities, which interest will be added to the settlement fund.

EXHIBIT A

BEST COPY AVAILABLE

March 29, 1976

RE: In Re Master Key Antitrust Litigation;
Class Action (MDL Docket No. 45, D.Conn.)

Dear Sirs:

It has been brought to the attention of this Court that you may manage apartment and/or office buildings which have had MASTER KEY SYSTEMS from one or more of the defendants installed within them during the period 1950 through 1970. If so, the owners of those buildings may be members of a plaintiff class and thus have an interest in a private antitrust action for treble damages now pending in the United States District Court for the District of Connecticut against four major finish hardware manufacturers of the following brand names: Russwin, Corbin, Sargent, Lockwood and Yale.

Enclosed please find the Notice from the District Court describing the nature of the class action and a $7,500,000 settlement with one major defendant. The Court requests your cooperation in forwarding a copy of this Notice to each of the owners of the buildings you manage who may be a member of the class.

To obtain additional copies of the enclosed Notice, write to:

Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P. O. Box 636
Hartford, Connecticut 06101

Please include with your request a list of owners and buildings to whom you are sending the Notices.

If you have any questions, please address all inquiries to the address in the preceeding paragraph.

s/Sylvester A. Markowski
Sylvester A. Markowski, Clerk
United States District Court
for the District of Connecticut

EXHIBIT B

(482)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO CONTENTION THAT NON-SETTLING DEFENDANTS HAVE STANDING TO OBJECT TO THE EMHART SETTLEMENT

These cases were originally filed against four defendants alleging, inter alia, a conspiracy among them and others in violation of the antitrust laws. In July 1975, plaintiffs entered into a settlement agreement with Emhart Corporation. The remaining non-settling defendants apparently intend to object to that settlement, yet they still have not made known the grounds on which they object.

Plaintiffs respectfully urge that the non-settling defendants have no interest cognizable at law to object to the settlement with Emhart, have no legal rights which are affected by that settlement, and therefore have no standing to object to the dismissal of Emhart Corporation.

Non-settling defendants argue that they are entitled to object to the Emhart settlement because (i) they are entitled to a set-off in the amount of the settlement against any adverse judgment and (ii) the different amounts paid in settlement of the public and private class actions may affect that set-off. This argument, however, begs the

issue whether non-settling defendants have any legal rights that are affected by the settlement and ignores the uncontradicted body of law holding that non-settling defendants have no standing to object to any settlement in an antitrust action, whether it be class or non-class.

ARGUMENT

A. As a Matter of Antitrust Law, Non-Settling Defendants Have No Rights to Object to a Settlement With Another Co-Conspirator.

Were these cases not class actions, Sargent and Eaton would have no right to object to the proposed settlement with Emhart. This is because (i) plaintiffs could have sued only one defendant for their total damages due to the conspiracy; and (ii) there is no right of "contribution" among the defendants in a Sherman Act conspiracy.

The law is clear that "[c]onspirators are jointly and severally liable and all may be joined or an action may be brought against only one." Non-Ferrous Metals, Inc. v. Saramar Aluminum Company, 25 F.R.D. 102, 104 (N.D. Ohio 1960); Walker Distributing Co. v. Lucky Lager Brewing Co., 323 F.2d 1, 8 (9th Cir. 1963); State of Washington v. American Pipe and Construction Co., 280 F.Supp. 802, 804-805 (W.D. Wash. 1968).

It is equally clear that one defendant has no right of contribution against another defendant in an action founded on conspiracy. Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1951); Baughman v. Cooper-Jarrett, Inc., 391 F.Supp. 671, 678 n.3 (W.D. Pa. 1975); Goldlawr, Inc. v. Shubert, 276 F.2d 614 (3d Cir. 1960).

In Union Stock Yards Co. v. Chicago, B. & Q. R. Co., 196 U.S. 217 (1905), the Supreme Court held:

> [T]he general principle of law is well settled that one of several wrongdoers cannot recover against another wrongdoer, although he may have been compelled to pay all the damages for the wrong done. 196 U.S. at 224.

The decision in Sabre Shipping Corp. v. American President Lines, Ltd., 298 F.Supp. 1339 (S.D.N.Y. 1969), recognized the "plaintiff's choice to sue those of the defendants it considers most culpable or most capable of making him whole..." and concluded:

> [E]ven though plaintiff had originally sued all defendants as joint tort-feasers, it had the absolute right to settle with some of them and covenant not to continue its suit against them, while reserving its right to continue against the non-settling defendants. 298 F.Supp. at 1346. [emphasis added]*/

In Broadway and Ninety-Sixth Street Realty Corp. v. Loew's Inc., 23 F.R.D. 9 (S.D.N.Y. 1958), non-settling defendants' objections to plaintiffs' settlement with certain other defendants were rejected on the ground that the non-settling defendant had no standing to object. Therein, the court held:

> The joinder of the moving defendants by plaintiffs gave their fellow defendants no vested interest in the presence of the moving [settling] defendants as co-parties.

---

*/ The court, relying on Mr. Justice White's concurring opinion in Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 144 (1968), further recognized that in Sherman Act cases with multiple defendants, a plaintiff "could enforce its judgment against one or some or all of the defendants."

> The objecting defendants do not suggest that upon dismissal, their rights as to the moving [settling] defendants will be any less than if the moving defendants had never been joined. Their joinder was a voluntary gift to their co-defendants by plaintiffs and plaintiffs, having given, could take away. 23 F.R.D. at 11. [emphasis added]

In this litigation, plaintiffs could have named as defendants only Eaton, Sargent and Ilco, or any one of them, and named Emhart Corporation only as a co-conspirator whose sales were affected by the conspiracy. If that were the case, the named defendants would still be liable for damages arising out of Emhart's sales. For the same reason, Eaton and Sargent have no right to object to dismissal of Emhart as a defendant. If anything, these non-settling defendants are benefited by the settlement, since any judgment against the non-settling defendants is subject to a set-off in the amount that Emhart Corporation paid. Flintkote Co. v. Lysfiord, 246 F.2d 368 (9th Cir.), cert. denied, 355 U.S. 835 (1957).*/

B. Rule 23 Does Not Create Any Rights in the Non-Settling Defendants to Object to the Emhart Settlement.

The provisions of Rule 23(e) requiring that class members be given notice and an opportunity to be heard before approval of a settlement does not confer any rights upon the non-settling defendants. It has been consistently

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*/ Non-settling defendants' argument that this right to a set-off gives them standing to object to the Emhart settlement does not follow, and has no basis in law.

held that non-settling defendants have no right or standing to object to dismissal of another defendant from a Rule 23 class action. As stated by Judge Fullam in Philadelphia Electric Co. v. Anaconda American Brass Co., 42 F.R.D. 324 (E.D. Pa. 1967):

> The proposed settlements are opposed by several of the remaining defendants. They have no standing to object.... The settlement payments would be credited on account of the overall recoveries, if any.... 42 F.R.D. at 326 n.1. [citations omitted]

In Wainright v. Kraftco Corp., 53 F.R.D. 78 (N.D. Ga. 1971), Judge Edenfield reasoned:

> [I]n a Rule 23(e) motion the parties with which the court is primarily concerned are the class of plaintiffs and the settling defendants. The non-settling defendants really have no standing to object to a proposed settlement. 53 F.R.D. at 81.

In a subsequent opinion, Judge Edenfield approved the proposed settlement as "fair, adequate, and reasonable with respect to the class." Wainwright v. Kraftco Corp., 58 F.R.D. 9, 11 (N.D. Ga. 1973). (emphasis added) Defendants simply ignore these controlling precedents.*/

---

*/ Defendants cite Utility Contractors Ass'n v. Toops, 507 F.2d 83 (3d Cir. 1974), but that decision cuts against them. Toops held that the plumbers union had "no legal interest" in a consent decree which made laborers eligible to perform work originally reserved to plumbers, and thus caused economic injury to union members. The Third Circuit dismissed an appeal from the consent order since the judgment did not affect "any enforceable rights" of the plumbers union, and noted that a hearing on their objections in the trial court was unnecessary. 507 F.2d at 86. Eaton and Sargent disregard the holding in Toops and cite a footnote which distinguishes another case where a consent decree affected contractual rights. No such situation exists here.

Numerous decisions stress that the judicial inquiry under Rule 23(e) concerns whether the settlement reached by the plaintiffs is fair and adequate for the absent class members. E.g., Feder v. Harrington, 58 F.R.D. 171, 174 (S.D. N.Y. 1972); Norman v. McKee, 431 F.2d 769, 774 (9th Cir. 1970), cert. denied, 401 U.S. 912 (1971). The general rule is well stated in 7A Wright & Miller, Federal Practice & Procedure, §1797:

> The purpose of [Rule 23](e) is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights when the representatives become fainthearted before the action is adjudicated or are able to secure satisfaction of their individual claims by compromise. At p. 226. [emphasis added]

In support of their argument, defendants quote the following language from Section 1797 out of context:

> In general, the standard used by the courts in evaluating compromise is that the proposal must be fair an easonable and in the best interests of all those who will be affected by it. At p. 229.

But defendants fail to advise the Court that Wright & Miller defines "those ... affected" by the settlement by reference to the decision in Wainwright v. Kraftco Corp., 53 F.R.D. 78 (N.D. Ga. 1971), that non-settling defendants have no standing to be heard with respect to a proposed settlement. 7A Wright & Miller, Federal Practice & Procedure, §1797, at p. 229, ftn. 38.

CONCLUSION

For the foregoing reasons, the non-settling defendants have no legal interest to object to the settlement or to the dismissal of defendant Emhart Corporation.

Accordingly, this Court should not entertain any objections to the proposed settlement from the non-settling defendants.

Respectfully submitted,

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DATED: May 19, 1976

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of PLAINTIFFS' MEMORANDUM IN OPPOSITION TO CONTENTION THAT NON-SETTLING DEFENDANTS HAVE STANDING TO OBJECT TO THE EMHART SETTLEMENT was mailed to all defense counsel and other counsel of record, this 19th day of May, 1976.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

(483)

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

MEMORANDUM IN SUPPORT OF
SETTLEMENT WITH EMHART CORPORATION

This litigation, consolidated under 28 U.S.C. §1407, involves fifteen state-wide class actions on behalf of public entities, national class actions on behalf of public entities and private builder-owners, and individual suits brought by the State of New Jersey and the City of New York. The first cases were instituted in 1970 and the national classes were certified by Judge Wood in City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970). Thereafter, additional class actions were filed in other jurisdictions; all cases were transferred to the District of Connecticut for purposes of consolidated pretrial discovery.

A motion by defendants to set aside the class certification was denied by Order of May 27, 1975. In re Master Key Antitrust Litigation, CCH Trade Cas. ¶60,377 (D. Conn.), appeal dismissed, 528 F.2d 5 (2d Cir. 1975). Notices were published and mailed to members of the national and state-wide classes on March 29, 1976.

All pending cases have been consolidated for trial of the liability issues, beginning September 14, 1976, and a

schedule has been established for the completion of discovery and pretrial preparation. Pre-Trial Order of March 24, 1976 (D. Conn.).

The settlement now before the Court for approval was reached with Emhart Corporation*/ after five years of intensive pretrial discovery into liability and damage issues by liaison counsel for plaintiffs and after the disposition of crucial motions. The work that preceded the settlement is summarized below.

The plaintiffs pursued extensive pretrial discovery before the settlement agreement with Emhart Corporation

Settlement negotiations were concentrated in May and June, 1975, although initial disucssions took place several months earlier. Counsel for Emhart Corporation and liaison counsel for plaintiffs reached agreement on June 11, 1975, for settlement in the amount of $7,500,000, plus interest from August, 1975. A written agreement was executed on June 26, 1976. Prior to any discussion of settlement, counsel for the plaintiffs accomplished the following matters:

1. Propounded three sets of consolidated interrogatories upon defendants, and twice moved to compel answers under Rule 37.

2. Inspected documents at the corporate headquarters of the four defendants and the offices of the industry's three trade associations. This inspec-

*/ Emhart manufactures locks and other builders hardware under the brand names "Corb " and "Russwin."

tion extended over two years, and involved months of work by counsel for plaintiffs; millions of documents were reviewed and more than 30,000 documents were copied for further analysis. These records fill approximately eight file drawers.

3. Conducted an extensive deposition program. Approximately thirty (30) employees and former employees of the defendants were examined. Since the settlement, additional witnesses associated with the defendants have been deposed. Likewise, employees of class representatives, contractors and potential witnesses for plaintiffs were deposed by defendants.

4. Interviewed numerous persons in the contract hardware industry to get background for the case and locate witnesses for trial.

5. Employed an expert witness to analyze the record, to consult with plaintiffs, and to prepare to testify at trial with respect to the economic conclusions he would draw from the evidence.

6. Subpoenaed records from various contract hardware dealers throughout the country, copying thousands of documents with respect to sales of contract hardware and master key systems.

7. Answered interrogatories propounded by defendants and collected purchase data from plaintiffs and class members in the state-wide class actions. This material fills more than twenty-five file drawers.

8. Interviewed state personnel and general contractors with respect to the procedures for sale and installation of contract hardware.

9. Prepared Plaintiffs' Designation of Evidence and Memorandum of Law with respect to the nature and proof of the antitrust violations committed by defendants.

A number of significant legal issues were briefed and argued by plaintiffs

This litigation has involved issues of critical importance to the effective prosecution of these antitrust class actions. The following matters were resolved in the course of the consolidated pretrial proceedings:

1. The standing of plaintiffs, as indirect purchasers, to recover damages under Section 4 of the Clayton Act. In re Master Key Antitrust Litigation, CCH Trade Cas. ¶74,680 (D. Conn. 1973). In support of this position, liaison counsel filed an amicus brief in the Western Liquid Asphalt Cases, 487 F.2d 191 (9th Cir. 1973), cert. denied, 415 U.S. 919 (1974).

2. The separation of liability and damage issues for consolidated trial of all cases, the proof of liability on a class-wide basis, and whether these actions may be maintained as nationwide and statewide class actions. In re Master Key Antitrust Litigation, CCH Trade Cas. ¶60,377 (D. Conn. 1975). On appeal by the defendants, the Second Circuit refused to disturb the procedural rulings by the District Court. In re Master Key Antitrust Litigation, 528 F.2d 5 (2d Cir. 1975).

3. Whether a witness waives his Fifth Amendment privilege by voluntary testimony at deposition that disclosed illegal conduct. State of Illinois v. McCulloch, CCH Trade Cas. ¶75,395 (9th Cir. 1974).

The settlement negotiations

The negotiations leading to the settlement were conducted between Ralph C. Dixon, counsel for Emhart Corporation, and Lee A. Freeman, Jr., co-liaison counsel for plaintiffs. The terms of the settlement are contained in the written agreement filed with the District Court, which agreement was negotiated on behalf of plaintiffs by liaison counsel. The settlement was conditioned upon acceptance by counsel for all plaintiffs, which acceptance was received by August, 1975.

There were several meetings and numerous discussions among plaintiffs' counsel prior to complete acceptance and filing of the settlement agreement with the District Court. These discussions led to agreement on the amount of the settlement, the allocation between public and private classes, and distribution among the states, with the procedure for distribution to class members to be left for subsequent proceedings.

The significant terms of the settlement

The settlement provides for payment of $7,500,000 by Emhart Corporation. This amount was deposited in an escrow account in August, 1975. The interest earned on the settlement fund belongs to the plaintiffs and class members.

The settlement fund has been invested in United States Treasury bills in the amount of $7,955,000, that are due on August 5, 1976. There is a cash balance of $3,765.50.

Emhart Corporation's sales of contract hardware stay in the case as a basis for recovery against the non-settling defendants. The other defendants thus remain responsible for the entire amount of damages. If the anti-trust violations are proven at trial, the total damage award would be trebled and then the settlement deducted from the trebled amount. Flintkote Co. v. Lysfjord, 246 F.2d 368, 397-398 (9th Cir. 1957).

Emhart Corporation has agreed to cooperate in making witnesses available and supplying necessary factual information for trial.

Principles governing judicial approval of class action settlements

Judicial consideration of the proposed settlement should not involve the trial judge on the merits of the controversy. State of West Virginia v. Chas. Pfizer & Co., 314 F.Supp. 710, 714 (S.D. N.Y. 1970), aff'd, 440 F.2d 1079, 1085-86 (2d Cir.), cert. denied, 404 U.S. 871 (1971). "The very purpose of a compromise is to avoid determination of sharply contested and dubious issues."... In re Prudence, 98 F.2d 559, 560 (2d Cir. 1958). Resolution of substantive questions would undermine the strong "public policy of encouraging settlements." Florida Trailer and Equipment Co. v. [illegible], 284 F.2d 567, 571 (5th Cir. 1960); Moses-Ecco Co. v. Roscoe-Ajax Corp., 320 F.2d 685, 690 (D.C. Cir. 1963).

Evaluation of the fairness of a settlement by the Court requires it to balance the hazards of litigation, including its risk and cost, against the benefits obtained by settlement. Speaking to the standards to be applied, Judge Wyatt stated:

> Approval should be given if the settlement offered is fair, reasonable and adequate. These terms are general and cannot be measured scientifically.
>
> The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.... The Supreme Court directs the judge to reach "an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated" and to "form an educated estimate of the complexity, expense, and likely duration of such litigation * * * and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." State of West Virginia v. Chas. Pfizer & Co., 314 F.Supp. at 740-41.

It is not the Court's purpose in this process to "balance the scales with the nicety of an apothecary." Glicken v. Bradford, 35 F.R.D. 144, 152 (S.D.N.Y. 1964). "The Court will not substitute its business judgment for that of the parties." Zerkle v. Cleveland-Cliffs Iron Co., 52 F.R.D. 151, 159 (S.D.N.Y. 1971).

In City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), the Court of Appeals summarized the factors basic to judicial scrutiny of a settlement of a case similar to ours:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery;
(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. [citations omitted]

In appraising the fairness of a proposed settlement, view of experienced counsel favoring the settlement is "entitled to considerable weight," Fielding v. Allen, 99 F.Supp. 137, 144 (S.D.N.Y. 1951), and there is "a strong initial presumption that the compromise is fair and reasonable." Josephson v. Campbell, 1967-69 CCH Fed. Sec. L. Rep. ¶92,347 (S.D.N.Y. 1969). State of West Virginia v. Chas. Pfizer & Co., 314 F.Supp. at 741; Levin v. Mississippi River Corp., 59 F.R.D. 353, 361 (S.D. N.Y. 1973); Feder v. Harrington, 58 F.R.D. 171, 174-75 (S.D. N.Y. 1973).

In weighing the proposed settlement, the Court must determine whether the amount of the settlement falls within a "range of reasonableness," which has been defined by Judge Friendly as "a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion...." Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972).

This settlement involves only one defendant; the other defendants remain responsible for the entire amount of damages caused by Emhart Corporation. Two of the remaining three defendants are very solvent corporations, capable of satisfying any judgment which plaintiffs and class members

may receive.*/ Thus, the claims of class members have not been diminished or foreclosed in any fashion by the settlement. As stated in Wainwright v. Kraftco, 58 F.R.D. 9, 12 (N.D. Ga. 1973):

> Indeed, if all the defendants but one settled with the class, that remaining defendant would still be liable for the damages caused by all. Since [the settling defendant] has agreed to open its files to the plaintiff class upon settlement, the class will not suffer any discovery loss either.

Most settlements are evaluated on the basis of potential single damages for the applicable four-year antitrust statute of limitations; to lengthen that period in this case, plaintiffs must establish fraudulent concealment on the part of defendants at trial. Because the partial settlement with Emhart Corporation does not reduce potential recovery and this litigation is scheduled to go to trial against the other defendants, it is not necessary to analyze the various uncertainties that plaintiffs may face in a jury trial and subsequent appeals, as well as the time and expense necessary for plaintiffs to establish--with finality--the damages incurred by class members.

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*/ In antitrust suits, the defendants are wholly and severally liable. Thus each defendant is liable for the whole amount of the judgment. See Non-Ferrous Metals, Inc. v. Saramar Aluminum Co., 25 F.R.D. 102, 104 (N.D. Ohio 1960); Walker Distributing Co. v. Lucky Lager Brewing Co., 323 F.2d 1, 8 (9th Cir. 1963); State of Washington v. American Pipe and Construction Co., 280 F.Supp. 802, 804-805 (W.D. Wash. 1968).

The fairness and adequacy of the settlement

The settlement figure of $7,500,000 represents 8% of Corbin and Russwin contract hardware sales for the four-year period prior to the federal government's complaint, 1965 through 1968. The Corbin and Russwin sales figures were obtained from the records kept by Emhart Corporation in the regular course of business:

Sales of Contract Hardware
(excludes sales to stock accounts)

	Corbin	Russwin
1965	$ 13,086,145	$ 9,101,620
1966	14,109,047	9,344,930
1967	12,809,466	9,338,074
1968	15,063,241	11,055,495
TOTAL	$ 55,067,899	$ 38,840,119
TOTAL for Emhart Corporation:		$ 93,908,018

The 8% refund by Emhart Corporation may be compared to estimates of damages as follows:

(i) There is evidence that defendants met and exchanged price information to stabilize list prices and to control discounts or "deviations" from list prices by the manufacturers. There is also evidence that defendants allocated master key jobs, customers and territories among their distributors to eliminate (a) price competition at the dealer level and (b) corresponding pressure upon the manufacturers to give discounts. When faced with a competitive situation, defendants gave their dealers discounts ranging

from 10% to 20%. These discounts (or price concessions) were not given on master key extensions or jobs outside a dealer's assigned territory. The dealers, at the same time, put higher mark-ups on "protected" work.

(ii) The measure of damages may also be estimated by reference to jobs that maverick dealers obtained (or tried to obtain) in violation of defendants' restraints. Documents produced by defendants show that dealers who infringed on another dealer's master key system or assigned territory took jobs at 10% to 30% below the "protected" dealer's price.

Plaintiffs' Designation of Evidence, pp. 68-84, which was filed on December 6, 1974, summarizes the effect of the alleged antitrust violations on prices of contract hardware.

The allocation between public and private classes

The allocation of 80% to public class members and 20% to private class members reflects Emhart Corporation's sales of contract hardware to categories of customers in those classes. Emhart Corporation's annual summaries of contract hardware sales by Dodge Project Classification were used to determine the percentage relationship of sales to public and private buildings included in the respective class actions. The following categories were used:

Public	Private
Educational and Science*/	Office and Bank Buildings
Hospitals and Health Buildings	Apartments
Dormitories*/	Hotels and Motels
Public	

As shown in Schedule A, attached to this memorandum, sales to private buildings varied from 15.2% to 20.5% of the total sales to the categories listed above, for the years 1965 through 1968, inclusive.**/

The 80-20% allocation also gave recognition to the following factors:

1. The product involved in this litigation, contract hardware, is not sold for residential construction, such as single family homes, condominiums, or town houses, which constitutes the bulk of private construction.

2. The evidence in this case indicates that the alleged illegal overcharges were higher on extensions of master key systems than original installations. Extension work is concentrated in the public

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*/ These categories may include private schools. Information obtained from the Department of Health, Education and Welfare shows that public school enrollment accounts for more than 90% of total elementary and secondary school enrollment, and more than 77% of students in institutions of higher learning.

**/ These figures are also corroborated in a preliminary computer study done by an accountant retained by defendants to analyze records of contract hardware distributors.

sector, expecially schools, colleges and hospitals. The vast majority of master key system extensions occur on public construction.*/

CONCLUSION

For the foregoing reasons, plaintiffs submit that the proposed settlement with Emhart Corporation is fair, reasonable and adequate.

Respectfully submitted,

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DATED: May 15, 1976

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*/ While the conspiracy had a greater effect upon extensions of master key systems, it was decided not to differentiate between overcharges on new jobs and extensions for purposes of notices to class members and eligibility to share in the settlement. The distribution plans, to be submitted later, may give heavier weight to purchases of contract hardware for extensions of master key systems than for new jobs. But Emhart's sales were not broken down into new jobs and extensions in calculation of the overall settlement amount.

MASTER KEY ANTITRUST LITIGATION

ANALYSES OF SALES - PUBLIC v. PRIVATE
EMHART CORPORATION

Dodge Project Classifications	1965 Contract Orders	1965 Percentage of Total	1966 Contract Orders	1966 Percentage of Total	1967 Contract Orders	1967 Percentage of Total	1968 Contract Orders	1968 Percentage of Total
PUBLIC								
Educational & Science	$ 8,890,522	54.5	$ 9,864,208	57.1	$10,542,689	59.6	$ 9,926,638	54.4
Hospitals & Health Buildings	2,564,114	15.7	2,830,086	16.4	2,993,743	16.9	2,933,063	16.1
Dormitories	869,594	5.3	673,686	3.9	537,336	3.0	646,658	3.5
Public (Other)	980,544	6.0	869,797	5.0	938,213	5.3	997,919	5.5
TOTAL Public	$13,304,774	81.5	$14,237,777	82.4	$15,011,981	84.8	$14,504,278	79.5
PRIVATE								
Office & Bank Buildings	$ 1,682,533	10.4	$ 1,697,052	9.8	$ 1,612,060	9.1	$ 1,771,289	9.7
Apartments	560,214	3.4	610,624	3.5	328,835	1.9	590,388	3.3
Hotels & Motels	767,907	4.7	732,700	4.3	734,113	4.2	1,375,169	7.5
TOTAL Private	$ 3,010,654	18.5	$ 3,040,376	17.6	$ 2,675,008	15 2	$ 3,736,846	20.5

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SCHEDULE "A"

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Plaintiffs' MEMORANDUM IN SUPPORT OF SETTLEMENT WITH EMHART CORPORATION was mailed to all defense counsel and other counsel of record this 15th day of May, 1976.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTI-TRUST LITIGATION	M.D.L. Docket No. 45 All Cases May 25, 1976

MEMORANDUM IN OPPOSITION TO NON-SETTLING DEFENDANTS' CLAIM OF STANDING TO OBJECT TO PROPOSED SETTLEMENT WITH EMHART CORPORATION

For the reasons set forth in "Plaintiffs' Memorandum in Opposition to Contention that Non-Settling Defendants Have Standing to Object to the Emhart Settlement," dated May 19, 1976, Emhart respectfully urges that the non-settling defendants have no interest cognizable at law to object to the settlement, have no legal rights which are affected by the settlement, and therefore have no standing to object to the approval of the settlement and the dismissal of Emhart Corporation.

Respectfully submitted,

EMHART CORPORATION,

By [signature]

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I, RICHARD M. REYNOLDS, certify that I have this 25th day of May, 1976, served a copy of the foregoing Memorandum on those attorneys appearing on the attached service list, pursuant to Rule 6 of the Rules of Procedure of this Court.

[signature]
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(484)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	MDL DOCKET NO. 45 (ALL CASES) May 27, 1976

MEMORANDUM IN SUPPORT OF PROPOSED SETTLEMENT OF EMHART CORPORATION

Defendant Emhart Corporation respectfully submits this Memorandum in support of the proposed settlement by it of all of the actions encompassed within MDL Docket No. 45.

Under the terms of the settlement agreement, dated June 26, 1975, a copy of which has been filed with this Court, Emhart has established a settlement fund of $7,500,000. This sum has been placed in escrow until such time as the settlement agreement is approved by this Court. Thereafter, the principal and interest thereon, which presently approaches $8,000,000, will be distributed to class members in accordance with the terms of the Agreement.

I. THE BACKGROUND OF THE LITIGATION

A. The Government Suits

In 1969, after approximately three years of investigation, the Antitrust Division of the United States Depa.tment of

Justice filed four separate civil lawsuits against Emhart, Eaton, Sargent and Ilco (the "government suits").* The government suits alleged that each defendant had entered into illegal arrangements with its distributors regarding the sale and distribution of master key systems.** The complaints alleged that defendants restricted their distributors geographically, from bidding on specifications prepared by another distributor and from bidding on extensions to master key systems established by another distributor. The government suits challenged only alleged vertical distribution practices and contained n allegations as to horizontal involvement among the defendant manufacturers.

B. The Private Suits

Begin ing in 1970 various private suits for damages were filed.*** There are now two national class actions, 15 state-wide class actions, and three individual suits.**** On

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* United States v. Ilco Corporation (D. Conn. Civil Action No. 13261, filed July 11, 1969); United States v. Emhart Corporation (D. Conn. Civil Action No. 13262, filed July 11, 1969); United States v. Sargent & Company (D. Conn. Civil Action No. 13263, filed July 11, 1969); United States v. Eaton Yale & Towne, Inc. (D. Conn. Civil Action No. 13264, filed July 11, 1969). The government requested only injunctive relief and elected not to file any damage actions. The government litigation against Emhart was terminated by Consent Decree on February 23, 1970.

** The government suits followed the establishment of new law by the Supreme Court as to vertical practices in the distribution of goods. United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

*** Those cases not filed in the District of Connecticut were transferred here either under 28 U.S.C. §1404 or 28 U.S.C. §1407.

**** The actions filed by Sturdy Homes, City of New York and State of New Jersey.

May 27, 1975, this Court certified the various classes,* and all pending cases have been consolidated for trial on the issue of liability. Trial is scheduled to commence in September of 1 76.**

The complaints contained the same allegations as the government suits, and in addition the private plaintiffs alleged that the defendant manufacturers conspired horizontally to fix list prices and to enforce similar vertical restraints. All defendants have denied the allegations.

C. The Extensive Discovery

The nationwide discovery, which has extended over five years, has simply been awesome and is quite possibly without parallel in the history of this District.

Its dimension may be grasped by a much abbreviated overview. Plaintiffs have examined literally millions of documents from defendants' files, have inspected documents at the three industry trade associations in San Francisco, New York and Washington, and have reviewed records of contract hardware distributors throughout the United States. They have taken over 30 depositions and filed three sets of comprehensive interrogatories, as well as document and Rule 36 requests. Defendants, in addition

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* In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60,377 (D. Conn. 1975), appeal dismissed, 585 F.2d 5 (2d Cir. 1975).

** "Pre-Trial Order" dated March 23, 1976.

to overseeing plaintiffs' discovery efforts and conducting their own depositions, have undertaken exhaustive document searches and reviews and filed several sets of interrogatories and document and Rule 36 requests. Both sides have retained economic experts, interviewed scores of potential witnesses, and analyzed the over 50,000 documents specifically identified to the litigation. With few exceptions, we think it fair to say that both sides are almost as well apprised of their opponents' case as they are of their own.

II. STANDARDS FOR JUDICIAL APPROVAL OF A PROPOSED CLASS ACTION SETTLEMENT

The decision to approve a settlement of a class action is left to the sound discretion of the trial court, as the Second Circuit recently held in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974):

> As we evaluate the settlement approved in this case, this Court must remain mindful that:
>
> > 'Great weight is accorded his [the trial judge's] views because he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.'
>
> Ace Heating & Plumbing Co., Inc. v. Crane Company, 453 F.2d 30, 34 (3d Cir. 1971).

> In fact, so much respect is accorded the opinion of the trial court in these matters that this Court will intervene in a judicially approved settlement of a class action only when the objectors to that settlement have made a clear showing that the District Court has abused its discretion. (citations omitted) (495 F.2d at 454.)*

In exercising that discretion, trial courts are mindful of the fact that settlement is "a course long favored by the law." Weight Watchers of Philadelphia v. Weight Watchers Int'l., 455 F.2d 770, 773 (2d Cir. 1972). See also Williams v. First National Bank, 216 U.S. 582, 595 (1910). As Chief Judge Caffrey stated in approving settlement of a group of class actions, "It should be noted at the outset that there is a policy in favor of settlement of lawsuits, particularly when they are potentially protracted and will constitute highly expensive litigation." In re Revenue Properties Co., Ltd., MDL 32, D. Mass. Memorandum, dated January 26, 1972.

A settlement should be approved if it is fair, reasonable and adequate. These terms are general and cannot be measured scientifically. "The evaluation of a proposed settlement requires an amalgam of delicate balancing, gross approximations and rough justice." City of Detroit v. Grinnell, supra, at 468. Basic to this determination is a comparison of the terms of the settlement against the probability of plaintiffs' success and

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* Accord, Conn. Ry. and Lighting Co. v. New York, N.H. & H.R.R., 190 F.2d 305, 308 (2d Cir. 1951); In re Prudence Co., Inc., 98 F.2d 559 (2d Cir. 1938).

the likely rewards of a trial of the case on the merits. Protective Committee v. Anderson, 390 U.S. 414, 424-425 (1968); State of West Virginia v. Chas. Pfizer & Co., 314 F. Supp. 710, 740 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir. 1971), cert. denied sub. nom. Cutler Drugs, Inc. v. Chas. Pfizer & Co., 404 U.S. 871 (1971); Dole, The Settlement of Class Actions for Damages, 71 Col. L. Rev. 971, 981 (1971); Haudek, The Settlement and Dismissal of Stockholders' Actions--Part II, 23 S.W.L.J. 765, 793 (1969). The court must determine whether the amount of the settlement falls within a "range of reasonableness," which has been defined by Judge Friendly as "a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion...." Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972).

Failure to recognize the uncertainties and vicissitudes of litigation in determining whether or not to approve a settlement can result in a denial of any recovery to plaintiffs. For example, in Piccard v. Sperry Corp., 36 F. Supp. 1006 (S.D.N.Y. 1941), aff'd, 120 F.2d 328 (2d Cir. 1941) (per curiam), the court rejected a proposed settlement of a derivative action only to have the defendants prevail on the trial of the case on the merits. Piccard v. Sperry Corp, 48 F. Supp. 465 (S.D.N.Y. 1943), aff'd, 152 F.2d 462 (2d Cir. 1946) (per curiam), cert. denied, 328 U.S. 845 (1946).

Even where the probability of a finding of liability is high, the amount of damages which may reasonably be expected to be recovered must also be considered. Failure to do so may lead to a result like that reached in Upson v. Otis, 155 F.2d 606 (2d Cir. 1946), where the approval of a settlement was reversed, the Court saying:

> on the facts presented to the district judge, the liability of the individual defendants was indubitable and the amount of recovery beyond doubt greater than that offered in the settlement. Accordingly it was an abuse of discretion to approve the settlement. (155 F.2d at 612.)

The action was then tried and plaintiffs obtained a judgment, twice considered by the Court of Appeals.* We are told, however, that "the ultimate recovery ... turned out to be substantially less than the amount of the rejected compromise." Haudek, The Settlement and Dismissal of Stockholders' Actions, Part II, supra, at 794.

Therefore, courts faced with a proposed settlement must balance the strength of plaintiffs' case against the amount offered in settlement. This, of course, requires that courts recognize the relevant legal issues involved; for "the presence of serious questions of law can afford sufficient basis for compromise." Haudek, supra, at 794 (emphasis in original). On the

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* Upson v. Otis, 168 F.2d 649 (2d. Cir. 1948) and Upson v. Otis, 169 F.2d 148 (2d. Cir. 1948).

other hand, in considering settlements, it is not necessary or desirable for courts to decide cases on the merits. This principle was set forth in State of West Virginia v. Chas. Pfizer & Co., supra, where District Judge Wyatt said:

> There is a further important principle to be observed in respect of judicial consideration of proposed settlements. This is that the judge does not try out or attempt to decide the merits of the controversy. 'Any virtue which may reside in a compromise is based on doing away with the effect of such a decision'. (citations omitted) (314 F. Supp. at 741).

On appeal, the Second Circuit agreed, noting that the court "...need not and should not reach any dispositive conclusions on the...unsettled legal issues which the case raises...." State of West Virginia v. Chas. Pfizer & Co., 440 F.2d at 1086.

The Fifth Circuit, among others, is in accord. In Florida Trailer and Equipment Company v. Deal, 284 F.2d 567 (5th Cir. 1960), the court provided a useful statement of the policy behind the power to compromise:

> The probable outcome in the event of litigation, the relative advantages and disadvantages are, of course, relevant factors for evaluation. But the very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise. This is a recognition of the policy of the law generally to encourage settlements. This could hardly be achieved if the test on hearing for approval meant establishing success or failure to a certainty. Parties would be hesitant to explore the

likelihood of settlement apprehensive as they would then be that the application for approval would necessarily result in a judicial determination that there was no escape from liability or no hope of recovery and hence no basis for a compromise. (284 F.2d at 571.)

III. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A. The Notice Sent To Potential Claimants Was More Than Sufficient

Notice of the proposed settlement has been given individually to a vast number of potential claimants. Pursuant to this Court's order, 17,729 copies of the "Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware" were sent to members of the class consisting of builder-owners of motels, hotels, apartment buildings and office buildings.* Such members were identified from defendants' lists of master key projects installed since 1950 and from lists of members of the Building Owners and Managers Association. Extensive individual notice was given also to members of the public entities class, in accordance with this Court's directive.**

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* See "Order With Respect to the Giving of Class Action Notices," dated March 3, 1976; "Affidavit of Mailing of Legal Notice to Motel, Hotel, Office Building and Apartment Building Class," dated May 14, 1976.

** See "Affidavit of Mailing Notice to Public Entities of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware," of Karol K. Gibbs, dated April 27, 1976, and "Affidavit of Mailing" of Jack M. Joss, dated April 27, 1976, and exhibits thereto. Notices were sent to all identifiable public entities in the United States, except the State of New Jersey. In the case of the States of Arizona, California, Connecticut, Kansas, New York and Ohio, notices were mailed by such states to entities identified by them. As a result of these efforts, approximately 20,000 public entities received individual notice.

In addition to this substantial effort to give individual notice to as many potential claimants as possible, notice was given by publication on March 29, 1976, in all regional editions of the Wall Street Journal.*

B. Plaintiffs Face The Possibility of A Failure of Proof As To The Horizontal Conspiracy Claim

Plaintiffs have alleged the existence of a horizontal conspiracy, whereas defendants have steadfastly denied the existence of any such conspiracy. Despite the vastness and complexity of this multidistrict proceeding, the core issue of this litigation is the existence or non-existence of a horizontal conspiracy.**

Unlike the usual case where private suits are filed after related government cases, plaintiffs gain nothing from the earlier government suits. Accordingly, it is well to bear in mind the observation of the Second Circuit in City of Detroit v. Grinnell Corp., supra:

> If the settlement offer was grossly inadequate, as appellants contend, it can be inadequate only in light of the strength of the case presented by the plaintiffs. Naturally, they describe their offensive posture in glowing

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* The daily circulation of the Wall Street Journal, all editions, is approximately 1,400,000. See Ayer's Directory of Publications (108th ed. 1976).

** The vast majority of materials identified to the litigation involve alleged vertical restrictions.

> terms, sparing no superlatives, while the defendants show a similar lack of restraint in demeaning the value of plaintiffs' cause of action. Nevertheless, the only truly objective measurement of the strength of plaintiffs' case is found by asking 'Was defendants' liability prima facie established by the government's successful action?' Whenever such liability has been prima facie established, any party wishing to justify a settlement offer that amounted to only a small fraction of the ultimate possible recovery would appear to have a very substantial burden of proof. The instant case, however, does not fall into this category. (495 F.2d at 455.)

Similarly, this litigation does not fall into that category either. Plaintiffs gain nothing from the earlier government suits as to the existence of a horizontal conspiracy for the basic reason that the government, after a lengthy investigation, did not even allege the existence of a horizontal conspiracy. The four separate civil suits instituted by the Department of Justice alleged only that certain of defendants' distribution practices, wholly vertical in nature, had been in violation of the antitrust statutes.*

We do not propose to review all of the materials - documentary, testimonial and economic - which will bear on this core issue at trial. We do wish to point out, however, in addition to the fact that Emhart has vigorously and consistently

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* United States v. Ilco (D. Conn. Civil Action No. 13,261, filed July 11, 1969); United States v. Emhart Corporation (D. Conn. Civil Action No. 13,262, filed July 11, 1969); United States v. Sargent & Company (D. Conn. Civil Action No. 13,263, filed July 11, 1969); United States v. Eaton Yale & Towne, Inc. (D. Conn. Civil Action No. 13,264, filed July 11, 1969).

denied plaintiffs' horizontal claims, that the remaining defendants are ready to go to trial on this central issue.* Because all defendants would be subject to joint and several liability if the plaintiffs were to sustain their horizontal claims, the risk of liability would be the same for all defendants. Eaton and Sargent,** as fully informed as Emhart and plaintiffs after several years of extensive discovery, have determined that it is in their best interests to go to trial on this central question rather than to accept settlement on the same terms as the Emhart settlement.*** There could be no more eloquent testimony to the fact that plaintiffs face the possibility of a failure of proof as to the horizontal conspiracy claim. And as will be shown hereafter, if plaintiffs fail on that issue, they fail completely and will recover nothing.****

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* Defendants Eaton and Ilco have previously proposed separation and trial first of issues related to the alleged horizontal conspiracy among defendants. See "Separate Class Action And Trial Proposal of Defendants Eaton Corporation And Ilco Corporation", dated January 8, 1975.

** Defendant Ilco is sui generis, because it is virtually without funds. At the present time, it is in the process of closing down its contract hardware operations completely.

*** As this Court is well aware, Eaton and Sargent at the conference with the Court on June 26, 1975, were offered settlement on the same terms as Emhart. That offer was rejected by Eaton and Sargent.

**** "Here, plaintiffs have settled in order to avoid the considerable risk that they would not be able to recover at all." City of Detroit v. Grinnell Corp., supra, at 459.

C. Plaintiffs Face Problems As To Proof Of Damages

In any antitrust damage action, the plaintiffs must, of course, show (a) that defendants have violated the antitrust laws, (b) that those violations have had an adverse impact upon them (the fact of damage), and (c) the amount of the resulting damages. Flintkote Company v. Lysfjord, 246 F.2d 368, 392 (9th Cir. 1957), cert. denied, 355 U.S. 835 (1957).

Plaintiffs' entire claim to damages rests on their ability to prove the existence of a horizontal conspiracy among defendants. Mr. Freeman, Co-Liaison Counsel for plaintiffs, made this clear in his responses to two inquiries by the Court concerning plaintiffs' theory of liability:

> THE COURT: Well, whether conceded or not, you don't make a claim based on a separate ground of violation by reason of a vertical conspiracy?
>
> MR. FREEMAN: No.
>
> * * *
>
> THE COURT:
>
> ...As I understand it, the showing of a series of vertical conspiracies here is in support of the claim that there was a horizontal price-fixing conspiracy and the vertical conspiracy merely was a way of implementing and strengthening the horizontal conspiracy.
>
> Am I correct?
>
> MR. FREEMAN: Yes, your Honor.*

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* Transcript of Hearing, dated January 27, 1975, at 11-12.

This Court emphasized the same point in stating:

> The damage claims arise from the horizontal, not the vertical, conduct. Thus the plaintiffs plan to prove illegal vertical restrictions upon the dealers only to demonstrate by implication the existence of a horizontal conspiracy among the defendants to reduce competition (and thus maintain prices above the competitive level) at the dealer level.*

Therefore, if plaintiffs fail to establish their horizontal conspiracy claim, they will be left with no recovery whatever.**

Assuming arguendo that plaintiffs prevail on the question of the existence of a horizontal conspiracy, they still face substantial problems as to proof of damages. For example, there are serious questions regarding the ability of plaintiffs to

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* Ruling on Pending Motions, dated May 27, 1975, at 1, n.1.

** If plaintiffs and the Court were to abandon this position and plaintiffs were to attempt to prove the existence of separate vertical conspiracies between each defendant and each of its hundreds of independent contractor distributors and any damages allegedly resulting therefrom, this Court, the parties and counsel would be engulfed in such a morass as to make it unlikely that any of us would live to see the resolution of the resulting tens of thousands of individual questions. See, e.g., "Defendants' Memorandum In Opposition To Plaintiffs' Rule 42 Motion", dated January 3, 1975; "Defendants' Memorandum In Support of Their Motion for Denial of Class Certification", dated January 3, 1975.

prove any substantial overcharges relating to their horizontal price fixing claim,* when viewed at least in light of Emhart's profits, its fixed costs, rates of return in other industries, Bureau of Labor Standards indices, the performance of the distributor market and, most importantly, the fact that other competing non-defendant manufacturers of contract hardware sold similar hardware at similar prices.** Also, there were no "white sales" or substantially reduced prices following the institution of either the government or private suits, as is often the case in price fixing conspiracies. In such cases the measure of damages may be computed by comparing the prices before the "white sales" and the lower "white sale" prices.*** The burden of establishing a "but for" price - the alleged price at which hardware would have been sold in the absence of or "but for" the conspiracy - is thus a substantial one, and on this basis alone the Emhart settlement would appear to be in the range of reasonableness.

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* To the extent that plaintiffs' damage claims are premised on a showing of pricing variations on individual jobs (discounts by a manufacturer and/or lower bids by a distributor) there will be differing interpretations regarding such variations by the parties and the experts, and hence uncertainty as to the ultimate resolution of any such claims. A further uncertainty is whether a universal "but for" price may be determined in this context from individual pricing variations.

** One of these, the Schlage Lock Co. of San Francisco, had sales of contract hardware roughly approximating in volume those of Emhart during the relevant period.

*** See, e.g., Ohio Valley Electric Corp. v. General Electric Co., 244 F. Supp. 914 (S.D.N.Y. 1965).

There are still further uncertainties as to damages, for the amount of damages may vary depending on the result of the liability trial. For example, proof of a horizontal price fixing conspiracy will produce damages quite different from proof of a horizontal conspiracy to enforce vertical restraints. With respect to the latter, the damage bases (sales on which damages are computed) and the amount of damages (the alleged per cent of overcharge on each sale) will vary depending on whether the alleged restriction relates to (a) a territorial restriction, (b) a customer restriction or (c) a restriction against bidding on an extension to a master key system. To complicate the matter still further, the damage bases and/or damages may vary even within these subcategories of alleged vertical restraints. For example, with regard to alleged restrictions on master key extensions, variances will be present depending on whether the damage base is (i) all extensions, (ii) all extensions on which there was no intrabrand competition, or (iii) extensions on which there was no competition, either intra- or interbrand.

D. The Plaintiffs Face Delays Even If They Prove The Existence of A Horizontal Conspiracy, Impact, And Damages.

Pre-trial discovery in this litigation has already consumed six years, with trial on the issue of liability scheduled to commence during September, 1976. The complexity of the issues and sheer vigor with which the parties have conducted this case to date suggest that the trial may be a protracted one. Moreover, success by plaintiffs at the liability stage would be only

a first step toward receiving an actual award of damages. In accordance with this Court's May 27, 1975 Ruling, calculation of damages will be made in a second trial limited to the damage issue alone if liability is established. This process promises to be considerably more time consuming than the liability trial, for as this Court itself said, while the

> proof that will be introduced as to the liability issues is in large part common to all plaintiffs... proof as to damages is likely to be much more individualized. Indeed, the damage component of this litigation, if we must reach it, may be easily resolved only by reference to a special master or through a long series of separate mini-trials, one for each plaintiff.*

In addition to the time involved in receiving an initial determination of the issues in this litigation, it is reasonable to expect that an appeal will be taken by defendants from any adverse findings, especially in light of the "vigor with which the parties have contested each issue in this lawsuit to date".** Already a number of controversial points have been raised and argued, not the least important of which is the very question of the propriety of the maintenance of these suits as class actions and the related question of the need for a showing of individualized "impact" of defendants' alleged actions upon each plaintiff. In its Ruling on this question, this Court

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* "Ruling on Pending Motions", dated May 27, 1975, at 10.

** "Ruling On Motion For Certification of Interlocutory Appeal", dated August 11, 1975, at 4.

recognized that there is a division of authority on this issue* and subsequently observed that the question is one on which "there is substantial ground for difference of opinion."** Defendants indicated their eagerness to contest this important point by seeking certification of an interlocutory appeal of this Ruling to the Second Circuit. When this request was denied, defendants sought review by the Court of Appeals, which dismissed for lack of jurisdiction.*** Having failed to obtain review at that time, defendants may well seek review at the conclusion of this case, assuming plaintiffs prevail. Similarly, the appellate process may be invoked to raise again such questions as the applicability to this case of the "pass-on" or indirect purchaser defense, previously rejected by this Court**** but never directly decided in this or any other case by either the Second Circuit or the Supreme Court.

This, of course, does not exhaust the list of issues which may be raised by defendants on appeal if the trial results in an unfavorable verdict. Others unforeseen at present may appear during the course of the proceedings. All will contribute to the prolongation of these proceedings and delay the recovery

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* "Ruling on Pending Motions", supra, at 4, n.3.

** "Ruling On Motion For Certification Of Interlocutory Appeal", supra, at 3, quoting 28 U.S.C. § 1292(b).

*** In Re Master Key Antitrust Litigation, 585 F.2d 5 (2d Cir. 1975).

**** In Re Master Key Antitrust Litigation, 1973-2 Trade Cas. ¶74,680 (D. Conn. 1973).

by plaintiffs of damages, even assuming they win on the liability question. Accordingly, the importance to plaintiffs of the immediate cash payment afforded by the proposed settlement is highlighted.

E. The Settlement Fund Established by Emhart Assures Plaintiffs of A Substantial Recovery Even If They Lose At Trial

Pursuant to the terms of the settlement agreement, on August 19, 1975, Emhart deposited $7,500,000 in an escrow account, to be distributed in accordance with the terms of the agreement upon its approval by this Court. As of August 5, 1976, interest received will have increased the amount available for distribution to approximately $7,958,000. Therefore, approval of the proposed settlement will mean that plaintiffs will receive a substantial recovery even if they ultimately lose at trial.

F. The Law Favors Settlements.

The Second Circuit has recently reminded us of the substantial benefits afforded the judicial system by ". . . the highly favored practice of settlement," City of Detroit v. Grinnell Corp., supra, at 459, "a course long favored by the law." Weight Watchers of Philadelphia v. Weight Watchers Int'l., supra, at 773. The policy is a sound one, serving the best

interests of both the parties before the court and the court itself. As this Court is well aware, massive class actions such as the one before the Court now take years to prepare for trial, and few cases of this magnitude proceed to final judgment on the individual class claims.* Settlement is the more usual course. In large part this reflects the desire of plaintiffs to compromise their claims in return for an award now rather than at some uncertain time in the distant future, the corresponding desire of defendants to avoid the continuing costs and inconvenience of protracted, complex litigation, and the recognition by all parties of the risks of litigation. But it also reflects a recognition of the limitations inherent in the judicial process. Massive class actions present great problems of manageability, for "courthouses are not coliseums",** and while there are certain advantages involved in trying related grievances in a single proceeding, there are disadvantages as well. One such disadvantage is the drain such cases place upon necessarily limited judicial resources.*** In evaluating a proposed class action settlement in a case of this type, the Second Circuit in Grinnell, supra, considered such factors relevant. That court observed that

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* City of Detroit v. Grinnell Corp., supra, at 468; Handler, The Shift from Substantive to Procedural Innovations in Antitrust Suits - The Twenty-Third Annual Antitrust Review, 71 Col. L. Rev. 1, 8 (1971).

** City of New York v. Int'l. Pipe and Ceramics Corp., 410 F.2d 295, 298 (2d Cir. 1969).

*** See Burger, "Chief Justice Burger Issues Yearend Report", 62 A.B.A.J. 189 (1976); Burger, The State of the Judiciary-1976, 62 A.B.A.J. 443, 444 (1976); Friendly, Federal Jurisdiction: A General View (1973).

> until the day of unlimited judicial resources dawns, the fact will remain that each hour of judicial effort that is expended on the claim of one plaintiff will mean that fewer hours will be available for all others. Thus, the consideration of 'judicial burden' does not really amount to a weighing of the interests of the courts against those of the plaintiffs, but rather it is a weighing of the bona fide interest of these plaintiffs against the interests of all others who are pursuing just causes of action. (495 F.2d at 448.)

Even a limited settlement is desirable when complex, multiparty litigation is involved, for experience shows that disposition of an entire case by settlement often begins with settlement by one party. Moreover, even if such total disposition is not achieved, settlement by one party serves the dual function of allowing the settling defendant to withdraw from litigation it no longer wishes to pursue and at the same time assures plaintiffs of a substantial recovery even if the nonsettling defendants should eventually prevail at trial.

G. The Amount of the Proposed Settlement Is Entirely Adequate.

The proposed settlement involves payment of $7,500,000, plus interest accrued from the date of the escrow. This figure represents 8% of all contract hardware sales by Emhart occurring within the four-year period not barred by the applicable statute of limitations.* It should be noted that in reality

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* Most settlements are evaluated on the basis of damages for the four-year period not barred by the antitrust statute of limitations. To lengthen that period, plaintiffs would have to establish fraudulent concealment by the defendants.

the recovery by plaintiffs will be higher than 8% both because sales to class members represent less than the totality of sales during the class period and because some class members will either opt out of the class or fail to file claims.*

In considering the adequacy of the terms of a settlement, there is "a strong initial presumption that the compromise is fair and reasonable." Josephson v. Campbell, 1967-69 CCH Fed. Sec. L. Rep. ¶92,347 (S.D.N.Y. 1969); State of West Virginia v. Chas. Pfizer & Co., 314 F.Supp. at 741; Levin v. Mississippi River Corp., 59. F.R.D. 357, 361 (S.D.N.Y. 1973); Feder v. Harrington, 58 F.R.D. 171, 174-75 (S.D.N.Y. 1973).

The instant settlement was arrived at after good faith bargaining by counsel. In that bargaining, plaintiffs were represented by highly qualified counsel with broad experience in the representation of plaintiffs in private antitrust damage actions, including numerous antitrust class actions. The figure of $7,500,000 was the highest figure counsel for Emhart was willing to pay, and counsel for plaintiffs had rejected all figures of lesser amount. Plaintiffs' counsel determined that, rather than undergoing years of protracted litigation, with the possibility of losing all, it was in the best interests of the classes to settle with one defendant now for a very substantial

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* The basis of the calculations is set forth in plaintiffs' "Memorandum In Support Of Settlement With Emhart Corporation," dated May 15, 1976, at 10, and will not be repeated here.

sum to be distributed to all class members. We believe that judgment was correct.

The almost universal practice of the antitrust bar is to settle treble damage claims on the basis of single damages. This practice has been both recognized and approved in this Circuit. Its rationale is discussed in City of Detroit v. Grinnell Corp., supra:

> The vast majority of courts which have approved settlements in this type of case, even though they may not have explicitly addressed the issue, have given their approval to settlements which are traditionally based on an estimate of single damages only.... To require treble damages to be considered as part of the computation of the base liability figure would force defendants automatically to concede guilt at the outset of negotiations. Such a concession would upset the delicate settlement balance by giving too great an advantage that is not required by the antitrust laws and one which might well hinder the highly favored practice of settlement. (495 F.2d at 458-459.)

In evaluating the fairness of the terms of the settlement agreement, it is of considerable significance that all counsel for all plaintiffs have approved the settlement. In the first place, they are intimately familiar with the case, having expended an extraordinary amount of time and effort on these cases over the last several years. Moreover, Co-Liaison Counsel for plaintiffs and their firms have probably had as much experience in treble damage antitrust litigation as any lawyers in the country, and the

Attorneys General of the individual plaintiff states have vast experience in such cases. Acceptance--without exception--by such experienced and eminent counsel is entitled to great weight and is strong evidence that the settlement is fair, adequate and reasonable.*

Equally persuasive is the fact that relatively few members of the class in relation to the number who received notice of the proposed settlement have opted out. Of 17,729 individual notices sent to members of the motel, hotel, office building and apartment building class and all those who received notice by publication, only 177 or approximately 1% of the class have elected to be excluded from the class.** In the public entities class, only 447 class members of the approximately 20,000 notified have elected to be so excluded.*** Remaining in the classes and not objecting to the settlement are a number of

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* In weighing "the likelihood of recovery in the action against the benefits of the compromise," Haudek, supra, at 793, "the judgment of counsel to plaintiffs (the class representatives) must be considered as well as the extent of support from interested parties and the presence or absence of good faith bargaining." State of West Virginia v. Chas. Pfizer & Co., 314 F. Supp. 710, 741. Accord, Fielding v. Allen, 99 F.Supp. 137, 144 (S.D.N.Y. 1951); City of Detroit v. Grinnell Corp., supra, at 462 (2d Cir. 1974): "The favorable receipt of the settlement offer at the hands of both plaintiffs and the individual attorneys who had little or nothing to do with the negotiation of the settlement is strong evidence that the District Court not only failed to abuse its discretion in approving the settlement but fulfilled its obligation in exemplary fashion." and Philadelphia Housing Auth. v. American Radiator & Standard Sanitary Corp., 322 F. Supp. 834, 838 (E.D. Pa. 1971) (Approval of settlement by overwhelming majority of plaintiffs' counsel is factor to be considered.).

** "Affidavit Re: Exclusions From Private-Builders' Class Action", dated May 14, 1976.

*** "Lists of Class Members That Have Requested Exclusion From The Class Action On Behalf Of Public Entities", dated May 13, 1976.

large, publicly-held corporations and numerous state entities which are well able to protect themselves. This, too, strongly suggests a finding that the proposed settlement should be approved.*

H. The Few Objections To Settlement Are Without Merit.

It is remarkable that, to the best of Emhart's knowledge only two sets of counsel have come forward to lodge objections to the settlement.

Gulf Oil Corporation, the first objector, is concerned that the settlement agreement is "too broad and not specific enough." This general criticism and the specific problems related to it cited by Gulf seem to reflect Gulf's admitted unfamiliarity with these proceedings. Many of the problems it cites deal with the identification of class members and distribution of settlement funds. However, assuming arguendo that such objections have any merit at all, they are not appropriately raised at this time. The settlement agreement clearly states that distribution of the settlement fund will be based upon plans of distribution submitted by class representatives, as modified and approved by the Court and subsequent proceedings.

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* See City of Detroit v. Grinnell, supra, at 462: "The proposed compromise is supported by a very high percentage of all the plaintiffs to which it was offered.

***

The strong support for the proposed compromise is a factor of great weight."

Gulf also apparently objects to the size of the settlement fund and its division between the public and private classes. However, Gulf presents no reasons for its objections, nor does it attempt to demonstrate that either the size of the fund or its allocation is inadequate.

The second objection, filed by Attorneys Seymour and Tydings apparently on behalf of certain real estate owners, does not challenge the amount of the settlement as unfair, unreasonable, or inadequate. Rather, their concern appears mainly to be the allocation of funds between the public and private classes.* Relying on general construction statistics, they assert that the private plaintiffs should receive a greater share of the settlement.

The allocation between public and private class members was derived from records of Emhart Corporation.** These records were made and kept in the regular and ordinary course of Emhart's business; they were contemporaneous documents, prepared before this litigation was instituted. Therefore, they are Emhart's best contemporaneous source of information for tracing its contract hardware to types of end users and are the most logical means to determine the allocation between public and private classes.

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* They also question the use of a four-year sales period as the basis of the settlement fund. However, as discussed in section III.G, supra, such a period is appropriate in antitrust settlements.

** See plaintiffs' "Memorandum In Support of Settlement With Emhart Corporation", dated May 15, 1976, at 11-13 and Schedule "A".

The construction statistics advanced by attorneys Seymour and Tydings do not relate specifically to contract hardware, but rather to such general categories as housing starts and new construction by dollar value. Like statistics were available to Emhart, yet it found them insufficient as a means of tracing its products to end users and undertook the additional effort and expense to construct the specific figures. These now form the basis of the allocation between public and private classes.

It is interesting to note that the non-settling defendants retained Price Waterhouse & Co. to conduct a study, inter alia, of the types of jobs reflected in the records of contract hardware distributors which were discovered in this litigation. The Price Waterhouse analysis of 3,500 individual jobs reflects that hotel, motel, apartment and office building jobs (which comprise the private classes) account for 10.23 percent of the jobs, while those jobs within the public classes comprise 50.57 percent of the jobs. A copy of page E-3 of Dykeman Exhibit 1, which summarizes the study, is attached hereto as Exhibit A.*

While any plan of allocation is unlikely to be mathematically exact to the last decimal point, it is submitted that the proposed plan, based as it is on specific contemporaneous

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* Dykeman Exhibit 1 had not been prepared at the time of the settlement agreement.

business records of Emhart, and buttressed by a specific analysis of 3,500 actual jobs, is reasonable and supported by the best and most relevant economic data available. Indeed, reliance on general data, as suggested by Attorneys Seymour and Tydings, without reference to actual sales data and without reference to the exact composition of the private class would leave the plan of allocation subject to criticism for ignoring the specific data available.

The plan of allocation has be n approved by all representative counsel, is based on the most relevant economic data available, and is reasonable. Accordingly, it should be approved.

IV. CONCLUSION

This Circuit was emphatic in stating, in City of Detroit v. Grinnell Corp., supra:

> It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, 'the [trial] judge does not try out or attempt to decide the merits of the controversy,' West Virginia v. Chas. Pfizer & Co., supra, 314 F. Supp., at 741, and the appellate court 'need not and should not reach any dispositive conclusions on the admittedly unsettled legal issues . . . .' West Virginia v. Chas. Pfizer & Co., supra, 440 F.2d at 1085-1086. (495 F.2d at 456.)

The proposed settlement is the result of arms-length, good faith bargaining by counsel experienced in antitrust litigations. It was made after extensive pre-trial discovery from defendants, and reflects a reasonable compromise* based on the competing claims, uncertain result of the liability trial, unsettled questions of law, the uncertainty as to damages, and the certainty of delay.** The settlement assures plaintiffs of a substantial recovery regardless of the outcome of the liability trial or the resolution of unsettled questions of law and claims as to damages, and allows Emhart to put an end to extremely costly and burdensome litigation. It is supported by all counsel for plaintiffs who are intimately familiar with the litigation and who have vast experience in such cases, and by almost all class members. From the point of view of the class members, the settlement is fair, reasonable and even generous. The settlement, therefore, should be approved.

Respectfully submitted,

EMHART CORPORATION

By

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Day, Berry & Howard
One Constitution Plaza
Hartford, Connecticut 06103
(203) 278-1330

Of Counsel:
Ralph C. Dixon
Richard M. Reynolds
Howard P. James

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* "...in any case there is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion - and the judge will not be reversed if the appellate court concludes that the settlement lies within that range." Newman v. Stein, supra, at 693.

** See Judge Friendly's comment in Newman v. Stein, supra, at 698: "When all these dubieties are considered in combination, as they must be...."

EXHIBIT A

MASTER KEY CASE STATISTICS

DESCRIPTION OF STATISTIC	NUMBER	PERCENT OF TOTAL
PRIVATE HOSPITAL	64	1,83
PRIVATE SCHOOL	78	2,23
PRIVATE COLLEGE	95	2,71
PRIVATE HOUSING - APT	62	1,77
HOTEL, MOTEL	13	0,37
PRIVATE-OTHER	658	18,80
OFFICE BUILDING	283	8,09
GEN. FACTORY	46	1,31
PUBLIC HOSPITAL	134	3,83
PUBLIC SCHOOL	895	25,57
PUBLIC COLLEGE	274	7,83
PUBLIC HOUSING	13	0,37
MUNICIPAL BUILDING	170	4,86
COUNTY BUILDING	73	2,09
STATE BUILDING	77	2,20
QUASI-GOVERNMENT AGENCY	32	0,91
PUBLIC OTHER	102	2,91
FEDERAL BUILDING	38	1,09
UNKNOWN	386	11,03
DATA NOT AVAILABLE	7	0,20
TOTAL	3500	100,00

E-3

(462)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY
ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

NOTICE OF APPEARANCE
AND INTENTION TO APPEAR

Each of the parties listed on the attached Exhibit "A" is a member of the private builder-owner class, as described in the Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware, which class was certified on May 27, 1975 by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The undersigned counsel hereby notify the Court that they have been retained by the parties listed on the attached Exhibit "A" to represent their interests in the above-captioned litigation.

The undersigned counsel also hereby notify the Court that they intend to appear at the hearing set to consider the fairness and adequacy of the proposed settlement in the above-captioned litigation, as described in the Notice of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware, which hearing is scheduled for Wednesday, June 2, 1976, before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut, at 10:00 o'clock a.m., in the North Courtroom of the United States Courthouse, 450 Main Street, Hartford, Connecticut.

Respectfully submitted,

MARK R. JOELSON

JOSEPH P. GRIFFIN

ARENT, FOX, KINTNER, PLOTKIN & KAHN
1815 H Street, N. W.
Washington, D. C. 20006
202/857-6043

EXHIBIT A

Private Builder-Owners on Behalf of Whom Arent, [illegible] Kintner, Plotkin, & Kahn is entering an appearance.

Ballston Centre Tower # 2 Limited Partnership	Bethesda, Maryland
Ballston Centre Tower # 3 Limited Partnership	Bethesda, Maryland
The 1730 Penn Associates	Bethesda, Maryland
The 1747 Penn Associates	Bethesda, Maryland
The 2025 M Street Associates	Bethesda, Maryland
The Shapiro-Rome Joint Venture	Bethesda, Maryland
Rockwood Development Company	Bethesda, Maryland
Parklawn Limited Partnership	Washington, D. C.
Marriott Corporation	Washington, D. C.
Rodman-Margulies Joint Venture	Washington, D. C.
Kraft - Rodman Joint Venture	Washington, D. C.
Dayton Beach Park No. 1 Corporation	New York, New York
210 Associates	New York, New York
L & M Joint Venture	Arlington, Virginia
Essex Joint Venture	Washington, D. C.
4000 Massachusetts Avenue Joint Venture	Washington, D. C.
Riddell Joint Venture	Washington, D. C.
1776 K Street Limited Partnership	Washington, D. C.
1919 M Street Limited Partnership	Washington, D. C.
1000 Connecticut Avenue Joint Venture	Washington, D. C.
1700 K Street Joint Venture	Washington, D. C.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

6-2-76

IN RE: MASTER KEY)
ANTITRUST LITIGATION) M.D.L. DOCKET NO. 45 524

District of Columbia : ss

AFFIDAVIT

SAMUEL H. SEYMOUR, being first duly sworn, deposes and says:

1. The law firms of Law Offices of Samuel H. Seymour and Danzansky, Dickey, Tydings, Quint & Gordon of Washington, D.C. have been retained by over 220 members of the private builder-owner class, certified by this Court under Rule 23 of the Federal Rules of Civil Procedure, to represent their interests in the Master Key Litigation.

2. Notices of appearance on behalf of these clients and intention to appear at the hearing held by this Court to consider the fairness and adequacy of the proposed settlement with defendant Emhart Corporation were timely filed in accordance with the provisions set forth in the class action notice.

3. My firm has undertaken an examination of construction industry statistics compiled by the Bureau of the Census of the United States Department of Commerce and the Research Division, Department of Buildings of the Housing and Development Administration of New York City to evaluate the proposed plan of allocating the Emhart settlement fund on the basis of 80% of the fund to the public entity classes and 20% of the fund to the private builder-owner class.

4. The following publications and data were examined: Construction Reports - Series C30-74S, Value of New Construction Put in Place: 1947-1974 (U.S. Bur. of the

Census, Dec. 1975); Construction Review, vol. 22 no. 1, Jan./Feb. 1976, (U.S. Dept. of Commerce, Bur. of Domestic Commerce); computer printouts of public and private housing starts (1959-1976) provided by the Construction Statistics Division of the Bureau of the Census; estimated cost of new buildings completed in New York City for each of the years 1950 through 1975 compiled by the Department of Buildings of the Housing and Development Administration of New York City.

5. The following classifications of private construction established by the Bureau of Census were utilized as the source material (see Construction Reports at 139-40):

a. Residential, new housing units, 2 or more unit structures. This classification includes apartments, apartment hotels and condominiums, but excludes residential units in buildings which are primarily nonresidential and those included in the nonhousekeeping residential category.

b. Nonhousekeeping Residential. This classification includes hotels (other than apartment hotels), motels, dormitories, fraternity and sorority houses, nurses' homes and similar facilities.

c. Office buildings. This classification includes office buildings and professional buildings used primarily for office space.

6. The following classifications of state and local public construction established by the Bureau of Census were utilized as the source material (see Construction Reports at 141):

a. Housing and Redevelopment

b. Educational

c. Hospital

d. Other State and Local Buildings

7. The statistical data compiled for the value of new construction put in place in the United States for each of the above classifications was examined for a period of years. The value of new construction put in place is a measure of the value of construction during the period and includes cost of materials used in the construction.

8. For example, in the year 1968 the following figures for value of new construction put in place with respect to the above classifications were obtained from Tables A-1 and A-3 of the Construction Review and Tables 1, 3 and 7 of the Construction Reports, referred to in paragraph 4 above

Private construction

Residential, 2 or more units: (Apartment buildings)	$7,203,000,000
Nonhousekeeping residential: (Hotels, motels)	$1,238,000,000
Office buildings:	$3,027,000,000*
	$11,468,000,000

*Prior to 1972 the Census Bureau included Office and other commercial buildings together. Since 1972, separate statistics for office buildings alone have been maintained. The 1968 figure for office buildings was obtained by multiplying the total reported for office and other commercial buildings by .39, which is the ratio of office buildings to office and other commercial buildings in each of the years 1972-75.

Public construction (state and local)

Housing and redevelopment:	$686,000,000
Educational buildings:	6,047,000,000
Hospital buildings:	629,000,000
Other state and local buildings:	2,141,000,000
	$9,503,000,000

9. A comparison of these figures shows that 54.7% of the total is in the private sector and 45.3% is in the public sector.

10. Similar analyses were performed for the years 1965-68 and another four-year period 1972-75. For the years 1965-68, the ratio between the value of construction put in

place in the private sector categories and the public sector categories and the public sector categories was estimated to be approximately 55% to 45%. For the years 1972-75, the value of construction put in place for each of the aforementioned categories was as follows:

Private Construction

Residential, 2 or more units: (Apartment buildings)	$56,512,000,000
Nonhousekeeping residential: (Hotels, motels)	22,355,000,000
Office buildings:	7,165,000,000
	$86,032,000,000

Public Construction (state and local)

Housing and redevelopment:	$31,140,000,000
Educational buildings:	26,681,000,000
Hospital buildings:	3,888,000,000
Other state and local buildings:	15,367,000,000
	$49,367,000,000

Thus, for the years 1972-75 the ratio of private to public construction was 63.5% for the private sector and 36.5% for the public sector.

11. A similar percentage relationship between the private and public sectors was indicated by the statistics compiled by the Department of Buildings of the Housing and Development Administration of New York City based on the estimated cost of new buildings completed in New York City for each of the years 1950-1975.

12. We were to unable to uncover any statistics indicating the cost of contract hardware used in the construction of buildings in either the private or public sectors.

Samuel H. Seymour

Samuel H. Seymour

Subscribed to and sworn before
me this 1st day of June, 1976.

Margaret L. Rohrbaugh
Notary Public

My commission expires Sept. 30, 1978.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY)
)
ANTITRUST LITIGATION) M.D.L. DOCKET NO. 45

MEMORANDUM OF CERTAIN MEMBERS OF THE PRIVATE BUILDEROWNER CLASS CONCERNING THE PROPOSED CLASS ACTION SETTLEMENT WITH DEFENDANT EMHART CORPORATION.

Pursuant to the Notice of Class Action and Partial Settlement With respect to Litigation Involving Finish Hardware, the firms of Law Offices of Samuel H. Seymour and Danzansky, Dickey, Tydings, Quint & Gordon have jointly filed notices of appearance and intention to appear on behalf of some 220 clients, who are members of the private builder-owner class certified by the Court under Rule 23 of the Federal Rules of Civil Procedure. *

This memorandum sets forth the preliminary comments of these class members concerning the fairness and adequacy of the proposed settlement with defendant Emhart Corporation and the proposed plan of allocation of the settlement fund between the classes of public entities and the private builder-owner class.

In evaluating the proposed Emhart settlement agreement on behalf of our clients, we are cognizant of the criteria established in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974) and West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079 (2d Cir. 1971), as well as the recommendations contained in the Manual for

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*/ The Seymour and Danzansky firms are co-counsel for the representatives of similar classes of private builder-owners in the construction industry that were certified by Judge Zirpoli in the Gypsum Cases and Judge Cassibry in the Plywood Antitrust Litigation.

Complex Litigation Part 1, §1.46 (rev. ed. 1973), for determining the fairness and adequacy of a class action settlement. It is, or course, particularly difficult to comment on a proposed settlement without having the benefit of the views of counsel for the class representatives and the settling defendant concerning the fairness and adequacy of the settlement. We therefore reserve the right to file, in advance of the June 2, 1976, hearing date, a supplemental memorandum containing our comments with respect to the reasons in support of the settlement advanced by the settling parties and other matters raised in connection with the Court's consideration of the settlement.

I. FAIRNESS AND ADEQUACY OF THE AMOUNT OF THE EMHART SETTLEMENT

We have obtained a copy of the settlement agreement and have corresponded with counsel for the class representatives requesting certain information concerning the settlement and the proposed plan of allocation among the classes. On the basis of our examination of the agreement and the information provided us by class counsel, several questions have arisen that must be answered, prior to the approval of the settlement by the Court, in order for our clients to properly evaluate and make an informed judgment as to whether the settlement is fair and adequate.

A. The settlement agreement provides that defendant Emhart Corporation will pay $7.5 million in compromise and final settlement of any and all claims that plaintiffs and class members have asserted or might assert against Emhart concerning any purchase to date of contract hardware. It is alleged in the complaints that defendants have violated the federal antitrust laws since 1950. It is our understanding, however, from conversations with counsel for the class representatives, that the amount of the settlement is based on

Emhart's sales of contract hardware for the four-year period 1965-68. Thus, the following questions are relevant to an evaluation of our clients' interests in the settlement:

1. Why was a four-year period selected for the basis upon which to negotiate the settlement?

2. Why were the years 1965-68 selected?

3. Neither the notice of the proposed class action settlement nor the settlement agreement itself contain any reference to who will be eligible to participate in the settlement. Are only plaintiffs and class members who purchased, directly or indirectly, contract hardware during 1965-68 eligible to participate in the settlement? Will class members who purchased, directly or indirectly, contract hardware prior to 1965 participate in the settlement and, if so, will they participate on the same basis as all other members of their class? Will class members who purchased, directly or indirectly, contract hardware from 1969 to the date of the settlement agreement participate in the settlement and, if so, will they participate on the same basis as all other members of their class?

B. According to the definitions in the class notice, membership in the governmental classes is limited to those states and public entities "that built structures having master key systems with contract hardware manufactured by any of the defendants;" and membership in the private builder-owner class is limited to those private persons and firms "who built for their own account or had built for them, whether for their own use, rental or sale, hotels, motels, office buildings and apartment buildings having master key systems with contract hardware manufactured by any of the defendants."

1. Assuming that the building or structure upon which a plaintiff or class member bases its claim has a master key system, will the claim be allowed to participate in the settlement if the contract hardware was manufactured by someone other than one of the defendants in this litigation? If not, on what ground will these claims be excluded?

2. If with respect to a particular claim a plaintiff or class member is able to establish the amount of its purchases of contract hardware but is unable to establish that the purchases were from any of the defendants in this litigation, will the claim be allowed to participate in the settlement? If not, on what ground will these claims be excluded?

3. Will claims involving purchases of contract hardware for buildings or structures that do not have master key systems be allowed to participate in the settlement? Will such claims be allowed to participate in the settlement if the claimant can establish that the contract hardware was manufactured by one of the defendants in the litigation? If not, on what ground will these claims be excluded?

4. Does the generic phrase "apartment buildings having master key systems . . ." include both condominium apartment buildings and co-operative apartment buildings? If not, on what basis are they excluded?

II. THE FAIRNESS AND ADEQUACY OF THE PROPOSED PLAN OF ALLOCATION OF THE SETTLEMENT FUND AMONG THE CLASSES

The settlement agreement provides that the settlement fund shall be apportioned as follows: 80% of the fund

to plaintiffs and class members in those actions brought on behalf of public entities, and 20% of the fund to plaintiffs and class members in those actions brought on behalf of private entities. On the basis of the information furnished us by class counsel, and our own independent study, we must, at this time, object to the proposed allocation on the ground that it appears to be manifestly unfair and inadequate to the private builder-owner class. Additionally, we contend that any plan for allocation of the fund among the classes certified by the Court is premature at this time.

A. THE APPARENT UNFAIRNESS AND INADEQUACY OF THE ALLOCATION PLAN TO PRIVATE BUILDEROWNERS.

Neither the class action notice nor the settlement agreement indicates the basis upon which the proposed 80-20 plan of allocation between the public entity and private classes was determined. Indeed, there appears to be no reason for distinguishing between the members of the classes with respect to their participation in the settlement. The members of the public entity and private classes are in the same position in the line of distribution from the manufacturers. That is, both public entities and private builder-owners are end-users of the alleged price-fixed product. Thus, any recovery from the settlement fund should be shared in proportion to their respective claims in the litigation, and not in accordance with some arbitrary plan of allocation established at this time.

As a result of conversations and correspondence with counsel for the class representatives, it appears that the proposed plan of allocation is based on settling defend-

ant Emhart's analyses of its contract hardware sales to the private and public sectors over the period from 1965-68. This, nowever, is the least logical of the alternative bases of allocating the fund among the classes.

1. Emhart's Sales Analyses are Irrelevant In Determining The Appropriate Allocation Of The Fund Among The Classes

The claims of plaintiffs and class members that will be extinguished and forever lost if the Emhart settlement is approved by the Court include all antitrust claims involving any purchase to date, whether direct or indirect, of contract hardware, which any and all plaintiffs and class members have asserted or might assert against Emhart Corporation. [Settlement Agreement ¶1 p.1, ¶B p.5] The claims against Emhart, however, are not limited to Emhart's sales; rather, Emhart has been sued for all damages resulting from the conspiracy to violate the antitrust laws as alleged in the complaints.

The law is well settled that a private antitrust action is an action in tort, Northwestern Oil Co. v. Socony-Vacuum Oil Co., 138 F.2d 967 (7th Cir. 1943), cert. denied 321 U.S. 792 (1944), and that therefore defendant Emhart is liable, jointly and severally, for damages resulting from its sales as well as the sales of the other defendants in the litigation. Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390 (1960); Twentieth Century Fox Film Corp. v. Goldwyn, 328 F.2d 190 (9th Cir.), cert. denied, 379 U.S. 880 (1964); Wall Products v. National Gypsum Co., 357 F.Supp. 832 (N.D.

Cal. 1973); Wainwright v. Kraftco Corp., 58 F.R.D. 9 (N.D. Ga. 1973); State of Washington v. American Pipe & Construction Co., 280 F. Supp. 802 (W.D. Wash. 1968). Thus, the claims that Emhart is settling are not limited to claims for damages based on its sales to plaintiffs and class members, and the distribution of those sales between the public and private sectors is therefore of little relevance in devising a plan of allocation of the settlement fund among the classes.

2. Available Industry Statistics Indicate That The Proposed Plan of Allocation Is Totally Inadequate

In response to our inquiries, the sole justification provided by class counsel for the proposed 80-20 plan of allocation was summaries of Emhart's analyses of its sales of contract hardware to the public and private sectors for a limited four-year period. This would seem to indicate that class counsel has not considered readily available industry statistics which produce a sharply different result.

For example, statistics compiled by the Census Bureau concerning the value of new construction put in place (1947-1974), and computer print-outs concerning public and private housing starts (1959-76), reveal that for a typical four-year period, 1972-75, the value of construction put in place for apartment and office buildings, hotels and motels was approximately $86,032,000,000; and that the value of construction put in place for public housing and redevelopment, educational and hospital buildings and other public buildings was approximately $49,367,000,000. A plan of allocation based on these statistics would indicate that 63.5% of the settlement fund should be allocated to the private builder-owner class and 36.5% of the fund to the public entity classes.

Similarly, an analysis of statistics showing the estimated cost of new buildings completed in New York City for each of the years 1950 through 1975 indicates that a proper allocation of the settlement between the public and private classes is closer to 30-70 than it is to the proposed 80-20.

The wide discrepancy between the industry statistics and the 80-20 split endorsed by the parties in the settlement agreement is a prima facie indication of the unreasonableness and inadequacy of the proposed plan of allocation. Since the members of the classes are situated in the same position in the line of distribution from the settling defendant, any allocation of the settlement between the classes must be reflective of the economic realities of the industry.

It is clear from the foregoing comments that the most equitable method of allocating the settlement between the public and private classes is either to base a plan of allocation on available industry statistics or to await the filing of proofs of claims by the respective members of the classes and allocate the settlement in proportion to the amount of claims filed.

Moreover, even if the Court were to accept Emhart's sales of contract hardware as appropriate for determining a plan of allocating the settlement fund, the very figures used to support the proposed 30-20 split apparently are inaccurate because sales of contract hardware by

Emhart which should have been included as sales to the private builder-owner class have been excluded. For example, in figures provided to us by class counsel, the total sales of contract hardware by Emhart in 1965, excluding sales to stock accounts, amounted to $22,187,765. Yet the summaries prepared by class counsel of Emhart's sales of contract hardware to the public and private sectors indicates a total of $16,315,428 for the year 1965. Thus, there is a difference of $5,827,337 between Emhart's total sales for 1965 and its purported sales in that year to the public and private sectors combined. Similar discrepancies appear in the sales figures for the other years provided us by class counsel. It is believed that a substantial portion of this difference is attributable to sales of contract hardware by Emhart to wholesalers, who are not represented in this litigation. Members of the private builder-owner class, however, quite likely purchased contract hardware from wholesalers and were damaged as a result thereof because the wholesalers passed on to them the conspiratorially fixed overcharge. Thus, some additional portion of the total sales must be allocated to the private class, which will indubitably affect the proposed plan of allocation.

B. IT IS PREMATURE FOR THE COURT TO APPROVE A PLAN OF ALLOCATION OF THE SETTLEMENT FUND AMONG THE CLASSES

It is entirely proper for the Court to decide whether the settlement is fair and adequate under Rule 23(e), F.R. Civ. P., without passing on, at this time, a plan of allocation of the settlement fund among the classes. The

settling defendant has no conceivable interest in how the amount it has agreed to pay is allocated among the settling classes. Indeed, its paramount concern is that the settlement in principal be approved and that it be dismissed as a defendant in accordance with the terms and conditions of the agreement.

Any plan of allocation of the settlement fund should be formulated by a committee of counsel and submitted to the Court for approval; and the private builder-owners should be represented on that committee by counsel who have no possible conflict of interests with the public entity classes. In this litigation the national governmental class and the private builder-owner class is represented by the same law firm. We do not mean to imply that there is any impropriety inherent in a single law firm representing two separate classes. But in light of the serious questions raised by a substantial number of members of the builder-owner class concerning the proposed plan of allocation of the settlement, which if approved by the Court would have a tremendous impact on the amount available for ultimate distribution to the class members, we think it is incumbent upon the Court to insure that the members of the private builder-owner class are not in any way disadvantaged by this dual representation.

The interests of members of the builder-owner class can only be adequately protected if a committee of counsel is established to devise plans of allocation and distribution of the settlement fund and counsel who represent only builder-owners are placed on that committee, as well as the counsel for the designated class representatives.

Respectfully submitted,

Samuel H. Seymour

Joseph D. Tydings (SHS)

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Samuel H. Seymour

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Joseph D. Tydings

May 12, 1976

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

AFFIDAVIT IN SUPPORT OF SETTLEMENT BETWEEN EMHART CORPORATION AND PUBLIC ENTITIES

LEE A. FREEMAN, JR., being first duly sworn on oath, deposes and says:

1. I am co-liaison counsel for plaintiffs in the above-captioned litigation and special counsel for the States of Illinois, Indiana, Michigan, Minnesota, Wisconsin, Colorado, South Dakota and West Virginia, and the Commonwealths of Kentucky and Pennsylvania.

2 This affidavit is filed in support of the settlement between Emhart Corporation and representative plaintiffs in the public class actions for $6,000,000, or 80% of the total amount paid by Emhart Corporation to settle all pending class actions on behalf of both public and private entities.

3. On April 20, 1976, co-liaison counsel for plaintiffs examined Francis C. Dykeman, an accountant retained by defendants Sargent & Company and Eaton Corporation

to analyze sales of contract hardware. This deposition revealed the following facts:

(a) Mr. Dykeman prepared a study of 3,500 master key projects from the files of more than 90 contract hardware distributors throughout the country. These projects were built in the years 1953-1974, with approximately 80% of the jobs occurring between 1964-1973. The personnel working under Mr. Dykeman's direction identified the type of building on which each master key system was installed. (Dykeman Dep. Exh. 2, pp. E-3 and E-19).

(b) Mr. Dykeman's tabulation of "type of user" showed the following relationship with respect to categories of buildings in public and private class actions:

Public	Number	Private	Number
Public Hospital	134	Private Housing - Apartment	62
Public School	895	Hotel, Motel	13
Public College	274	Office Building	283
Public Housing	13		
Municipal Building	170		
County Building	73		
State Building	77		
Quasi-Governmental Agency	32		
Public - Other	102		
	1,770		358
PUBLIC =	83.2%	PRIVATE =	16.8%

Data was not known or available for 393 jobs and master key systems were installed in 979 buildings that were not defined as class members in the pending litigation. (The computer tabulation is attached as Exhibit I).

(c) Mr. Dykeman's study further shows that defendants' master key systems were installed on 2,005 buildings out of 2,134 buildings where the primary brand of hardware could be identified. Data was unavailable or unknown for 1,346 jobs. (Dykeman Dep. Exh. 2, p. E-4).

Further the affiant sayeth not.

Lee A. Freeman

LEE A. FREEMAN, JR.

Subscribed and Sworn to before me this 27th day of May, 1976.

Notary Public

MASTER KEY CASE STATISTICS

DESCRIPTION OF STATISTIC	NUMBER	PERCENT OF TOTAL
PRIVATE HOSPITAL	64	1.83
PRIVATE SCHOOL	78	2.23
PRIVATE COLLEGE	95	2.71
PRIVATE HOUSING - APT	62	1.77
HOTEL, MOTEL	13	0.37
PRIVATE-OTHER	658	18.80
OFFICE BUILDING	283	8.09
GEN. FACTORY	46	1.31
PUBLIC HOSPITAL	134	3.83
PUBLIC SCHOOL	895	25.57
PUBLIC COLLEGE	274	7.83
IC HOUSING	13	0.37
MUNICIPAL BUILDING	170	4.86
COUNTY BUILDING	73	2.09
STATE BUILDING	77	2.20
QUASI-GOVERNMENT AGENCY	32	0.91
PUBLIC OTHER	102	2.91
FEDERAL BUILDING	38	1.09
UNKNOWN	386	11.03
DATA NOT AVAILABLE	7	0.20
TOTAL	3500	100.00

Exhibit I

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IN THE ED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

AFFIDAVIT OF KAROL K. GIBBS
WITH RESPECT TO EMHART SETTLEMENT

KAROL K. GIBBS, being first duly sworn on oath, deposes and says that:

1. I am employed by the firm of Freeman, Rothe, Freeman & Salzman, which firm has acted as co-liaison counsel and counsel for the national and state-wide governmental classes involved in the above-entitled cause. I make this affidavit to set forth the basis for the tabulations attached to the Memorandum in Support of Settlement with the Emhart Corporation as Schedule A.

2. Under the direction of Lee A. Freeman, Jr., I prepared an analysis of contract orders, by Dodge Project Classification, received by the Russwin and P. & F. Corbin Division of the Emhart Corporation for the years 1965-1968.

3. In this analysis, I employed sales reports which were contemporaneously prepared by the Emhart Corporation. These are attached as Exhibits A-D. The contract

order figures were taken from the following exhibits:

	Russwin	Corbin
1965	Exhibit A	Exhibit B
1966	Exhibit A	Exhibit B
1967	Exhibit C	Exhibit D
1968	Exhibit C	Exhibit D

4. Similar analyses were prepared from Emhart Corporation's records for the period 1969-1970. These analyses are attached hereto as Exhibits 1 and 2. The contract order figures for those years were taken from the following exhibits:

	Russwin	Corbin
1969	Exhibit E	Exhibit F
1970	Exhibit E	Exhibit F

Further the affiant sayeth not.

Karol K. Gibbs
KAROL K. GIBBS

Subscribed and Sworn to before
me this 28th day of May, 1976.

Darlene F. Holtz
Notary Public

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)
12 MONTHS 1966 COMPARED WITH 12 MONTHS 1965

DODGE PROJECT CLASSIFICATION	CONTRACTS 12 Months 1965	CONTRACTS 12 Months 1966	CHANGE AMOUNT	CHANGE PERCENT
A-STORES AND MERC. BLDGS.	$ [illegible]	$ [illegible]	+$ [illegible]	+ [illegible]
B-OFFICE AND BANK BLDGS.	[illegible]	[illegible]	- [illegible]	- 12%
C-WAREHOUSES, GARAGES, SERV. STA.	[illegible]	[illegible]	[illegible]	[illegible]
1 - COMMERCIAL	$ [illegible]	$ [illegible]	[illegible]	[illegible]
2 - MANUFACTURING	[illegible]	[illegible]	- [illegible]	- [illegible]
3 - EDUCATIONAL AND SCIENCE	[illegible]	[illegible]	- [illegible]	- [illegible]
4 - HOSPITALS AND HEALTH BLDGS.	[illegible]	[illegible]	- [illegible]	- [illegible]
5 - PUBLIC	$ [illegible]	$ [illegible]	+$ [illegible]	+ [illegible]
6 - RELIGIOUS	[illegible]	[illegible]	- [illegible]	- [illegible]
7 - AMUSE., SOCIAL & RECREATIONAL	[illegible]	[illegible]	- [illegible]	- [illegible]
8 - MISC. NONRESIDENTIAL	[illegible]	[illegible]	- [illegible]	- [illegible]
ALL OTHER NONRESIDENTIAL	$ [illegible]	$ [illegible]	-$ [illegible]	- [illegible]
TOTAL NONRESIDENTIAL	$ [illegible]	$ [illegible]	-$ [illegible]	- [illegible]
J-1 AND 2 FAMILY	$ [illegible]	$ [illegible]	- [illegible]	- [illegible]
K-APARTMENTS	[illegible]	[illegible]	- [illegible]	- [illegible]
L-HOTELS AND MOTELS	[illegible]	[illegible]	- [illegible]	- [illegible]
M-DORMITORIES	[illegible]	[illegible]	- [illegible]	- [illegible]
OTHER SHELTER	[illegible]	[illegible]	- [illegible]	- [illegible]
9 - RESIDENTIAL	$ [illegible]	$ [illegible]	-$ [illegible]	- [illegible]
TOTAL BUILDING	$ 38,466,740	$ 37,220,465	-$ 1,246,...	- [illegible]

RUSSWIN

CONTRACT ORDERS RECEIVED (ORDERS BY D.P.C.)
12 MONTHS 1966 COMPARED WITH 12 MONTHS 1965

DODGE PROJECT CLASSIFICATION	CONTRACT ORDERS 12 Months 1965	CONTRACT ORDERS 12 Months 1966	CHANGE 1966 AMOUNT	CHANGE 1966 PERCENT
A-STORES AND MERC. BLDGS.	$ 252,613	$ 264,919	+$ 12,306	+ 5%
B-OFFICE AND BANK BLDGS.	1,166,552	1,099,586	- 66,966	- 6%
C-WAREHOUSES, GARAGES, SERV. STA.	76,175	106,047	+ 29,872	+ 39%
1 - COMMERCIAL	$ 1,495,340 (13%)	$ 1,470,552 (11%)	-$ 24,788	- 2%
2 - MANUFACTURING	734,466 (6%)	823,737 (6%)	+ 89,271	+ 12%
3 - EDUCATIONAL AND SCIENCE	5,011,610 (42%)	5,614,785 (44%)	+ 603,175	+ 12%
4 - HOSPITALS AND HEALTH BLDGS.	1,471,870 (12%)	1,559,898 (12%)	+ 88,028	+ 6%
5 - PUBLIC	$ 832,748	$ 645,663	-$ 187,085	- 22%
6 - RELIGIOUS	772,217	720,162	- 52,055	- 7%
7 - AMUSE., SOCIAL & RECREATIONAL	208,023	231,887	+ 23,864	+ 11%
8 - MISC. NONRESIDENTIAL	43,063	85,065	+ 42,002	+ 98%
ALL OTHER NONRESIDENTIAL	$ 1,856,051 (16%)	$ 1,682,777 (13%)	-$ 173,274	- 9%
9 - UNCLASSIFIED	1,365,941 (11%)	1,790,078 (14%)	+ 424,137	+ 31%
TOTAL NONRESIDENTIAL	$ 11,935,278 (100%)	$12,941,827 (100%)	+$ 1,006,549	+ 8%
J-1 AND 2 FAMILY	$ 133,234	$ 113,332	-$ 19,902	- 15%
K-APARTMENTS	423,787	490,426	+ 66,639	+ 16%
L-HOTELS AND MOTELS	301,076	282,319	- 18,757	- 6%
M-DORMITORIES	581,690	476,586	- 105,104	- 18%
9 - RESIDENTIAL	$ 1,439,777	$ 1,362,663	-$ 77,114	- 5%
TOTAL CONTRACT ORDERS	$ 13,375,055	$14,304,290	+$ 929,235	+ 7%
CONTRACT AS % TOTAL ORDERS	81%	78%		

BEST COPY AVAILABLE

(2)

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)
12 MONTHS 1966 COMPARED WITH 12 MONTHS 1965

DODGE PROJECT CLASSIFICATION	CONTRACTS 12 Months 1965	CONTRACTS 12 Months 1966	CHANGE IN 1966 AMOUNT	CHANGE IN 1966 PERCENT
A-STORES AND MERC. BLDGS.	$ 2,254,[illegible]	$ 2,[illegible]	+$ 20,249	+ [illegible]
B-OFFICE AND BANK BLDGS.	2,225,802	2,35[illegible]	+ 126,[illegible]	+ [illegible]
C-WAREHOUSES, GARAGES, SERV. STA.	972,990	1,[illegible]	+ 229,[illegible]	+ [illegible]
- COMMERCIAL	$ 5,4[illegible] ([illegible])	$ 5,[illegible] (30%)	+$ 376,[illegible]	+ [illegible]
- MANUFACTURING	3,064,471 (19%)	3,6[illegible] (19%)	+ 552,69[illegible]	+ [illegible]
- EDUCATIONAL AND SCIENCE	4,163,765 (24%)	4,[illegible] (25%)	+ 775,[illegible]	+ [illegible]
- HOSPITALS AND HEALTH BLDGS.	1,514,659 (9%)	1,721,047 (9%)	+ 206,38[illegible]	+ [illegible]
S - PUBLIC	$ 841,660	$ 93[illegible],768	+$ 97,10[illegible]	+ [illegible]
6 - RELIGIOUS	782,506	825,128	+ 42,62[illegible]	+ [illegible]
7 - AMUSE., SOCIAL & RECREATIONAL	7[illegible],540	[illegible],[illegible]	+ 55,[illegible]	+ [illegible]
8 - MISC. NONRESIDENTIAL	595,951	65[illegible]	+ 59,[illegible]	+ [illegible]
LL OTHER NONRESIDENTIAL	$ 3,019,6[illegible] (15%)	$ 3,[illegible] (17%)	+$ 25[illegible]	+ [illegible]
OTAL NONRESIDENTIAL	$17,219,[illegible] (100%)	$ 19,[illegible] (100%)	+$ 2,[illegible]	+ [illegible]
J-1 AND 2 FAMILY	$14,601,063	$ 12,[illegible]	-$ 2,[illegible]	- [illegible]
K-APARTMENTS	4,936,[illegible]	4,[illegible]	+ [illegible]	+ [illegible]
L-HOTELS AND MOTELS	597,49[illegible]	51[illegible]	- 87,3[illegible]	- [illegible]
M-DORMITORIES	1,024,[illegible]	[illegible],3[illegible]	- 137,[illegible]	- [illegible]
OTHER SHELTER	27,53[illegible]	[illegible],[illegible]	- [illegible]	- [illegible]
- RESIDENTIAL	$21,247,501	$ 17,[illegible]	-$ 3,[illegible]	- [illegible]
TOTAL BUILDING	$38,466,740	$ 37,22[illegible]	-$ 1,246,275	- [illegible]

P. & F. CORBIN
CONTRACT ORDERS RECEIVED (ORDERS BY O.P.C.)
12 MONTHS 1966 COMPARED WITH 12 MONTHS 1965

DODGE PROJECT CLASSIFICATION	CONTRACT ORDERS 12 Months 1965	CONTRACT ORDERS 12 Months 1966	CHANGE IN 1966 AMOUNT	CHANGE IN 1966 PERCENT
A-STORES AND MERC. BLDGS.	$ 298,725	$ 293,474	+$ 4,749	+ [illegible]
B-OFFICE AND BANK BLDGS.	515,981	597,466	+ 81,4[illegible]	+ 1[illegible]
C-WAREHOUSES, GARAGES, SERV. STA.	64,079	22,153	- 41,925	- 65%
COMMERCIAL	$ 868,784 (11%)	$ 913,093 (10%)	+$ 44,309	+ 5%
MANUFACTURING	271,142 (3%)	426,536 (5%)	+ 155,394	+ 5[illegible]
EDUCATIONAL AND SCIENCE	3,878,912 (47%)	4,249,423 (47%)	+ 370,511	+ 1[illegible]
HOSPITALS AND HEALTH BLDGS.	1,092,244 (13%)	1,270,188 (14%)	+ 177,944	+ 16%
S - PUBLIC	$ 147,796	$ 224,134	+$ 76,338	+ 52%
6 - RELIGIOUS	490,641	433,233	- 57,408	- 1[illegible]
7 - AMUSE., SOCIAL & RECREATIONAL	218,553	140,111	- 78,442	- 3[illegible]
8 - MISC. NONRESIDENTIAL	72,228	155,133	+ 82,905	+115%
L OTHER NONRESIDENTIAL	$ 829,218 (11%)	$ 852,611 (10%)	+$ 23,393	+ [illegible]
UNCLASSIFIED	1,213,030 (15%)	1,290,788 (14%)	+ 77,758	+ [illegible]
TAL NONRESIDENTIAL	$ 8,253,330 (100%)	$ 9,102,639 (100%)	+$ 849,309	+ 10%
J-1 AND 2 FAMILY	$ 96,757	$ 5,080	-$ 91,677	- 95%
K-APARTMENTS	136,427	120,198	- 16,229	- 1[illegible]
L-HOTELS AND MOTELS	466,831	450,381	- 16,450	- [illegible]
M-DORMITORIES	287,914	197,300	- 90,614	- 31%
RESIDENTIAL	$ 987,929	$ 772,959	-$ 214,970	- 22%
TOTAL CONTRACT ORDERS	$ 9,241,259	$ 9,875,598	+$ 634,339	+ [illegible]
CONTRACT AS % TOTAL ORDERS	71%	70%		

BARSET FORM NO. [illegible]

Ex. B

(2)

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)
12 MONTHS 1968 COMPARED WITH 12 MONTHS 1967

DODGE PROJECT CLASSIFICATION	CONTRACTS 12 Months 1967	CONTRACTS 12 Months 1968	CHANGE IN 1968 AMOUNT	CHANGE IN 1968 PERCENT
A-STORES AND MERC. BLDGS.	$ 2,138,[illegible]	[illegible]	+$ 508,[illegible]	- 23
B-OFFICE AND BANK BLDGS.	2,202,[illegible]	[illegible],177,[illegible]	+ 854,[illegible]	+ 40
C-WAREHOUSES, GARAGES, SERV. STA.	1,[illegible]	1,180,[illegible]	+ 112,[illegible]	+ 10
COMMERCIAL	$ 6,079,[illegible] ([illegible]%)	$ 7,[illegible],627 (34%)	+$ 1,[illegible]	+ 20
MANUFACTURING	3,700,[illegible] (16%)	[illegible],404 (17%)	+ 66,[illegible]	+ 2
EDUCATIONAL AND SCIENCE	5,216,147 (23%)	5,347,[illegible] (24%)	+ 131,[illegible]	+ 2
HOSPITALS AND HEALTH BLDGS.	1,873,[illegible] (8%)	2,114,271 (9%)	+ 241,[illegible]	+ 13
5 - PUBLIC	$ 958,[illegible]	$ 1,111,[illegible]	+$ 153,[illegible]	+ 16
6 - RELIGIOUS	793,[illegible]	777,597	- 15,[illegible]	- 2
7 - AMUSE., SOCIAL & RECREATIONAL	[illegible],[illegible]	[illegible],[illegible]	+ 115,[illegible]	+ 14
8 - MISC. NONRESIDENTIAL	[illegible],[illegible]	705,[illegible]	+ 112,[illegible]	+ 17
L OTHER NONRESIDENTIAL	[illegible],[illegible]	[illegible],[illegible] (16%)	+$ 369,[illegible]	+ 11
TAL NONRESIDENTIAL	$20,138,[illegible] ([illegible]%)	$22,[illegible],[illegible] (100%)	+$ 2,[illegible]	+ 12
J-1 AND 2 FAMILY	$[illegible],[illegible]	[illegible],[illegible]	+$ 1,[illegible]	+ 9
K-APARTMENTS	4,[illegible],[illegible]	[illegible],[illegible]	+ [illegible],[illegible]	+ 52
L-HOTELS AND MOTELS	[illegible],[illegible]	[illegible],[illegible]	+ 118,[illegible]	+ 21
M-DORMITORIES	[illegible],[illegible]	[illegible],[illegible]	- [illegible],[illegible]	- 5
OTHER SHELTER	12,[illegible]	12,[illegible]	+ 131	+ 1
RESIDENTIAL	$21,155,[illegible]	$24,[illegible],[illegible]	+$ 3,682,[illegible]	+ 17
TOTAL BUILDING	$41,294,[illegible]	$47,[illegible],[illegible]	+$ 6,055,[illegible]	+ 15

RUSSWIN

CONTRACT ORDERS RECEIVED (ORDERS BY D.P.C.)
12 MONTHS 1968 COMPARED WITH 12 MONTHS 1967

DODGE PROJECT CLASSIFICATION	CONTRACT ORDERS 12 Months 1967	CONTRACT ORDERS 12 Months 1968	CHANGE IN 1968 AMOUNT	CHANGE IN 1968 PERCENT
A-STORES AND MERC. BLDGS.	$ 214,739	$ 196,248	-$ 18,491	- 9
B-OFFICE AND BANK BLDGS.	980,981	1,183,070	+ 202,089	+ 21
C-WAREHOUSES, GARAGES, SERV. STA.	131,050	87,703	- 43,347	- 33
COMMERCIAL	$ 1,326,770 (10%)	$ 1,467,021 (11%)	+$ 140,251	+ 11
MANUFACTURING	587,756 (4%)	668,814 (5%)	+ 81,058	+ 14
EDUCATIONAL AND SCIENCE	6,147,522 (47%)	5,729,831 (44%)	- 417,691	- 7
HOSPITALS AND HEALTH BLDGS.	1,763,599 (13%)	1,718,950 (13%)	- 44,649	- 3
5 - PUBLIC	$ 707,218	$ 673,222	-$ 33,996	- 5
6 - RELIGIOUS	545,114	513,978	- 31,136	- 6
7 - AMUSE., SOCIAL & RECREATIONAL	255,306	263,569	+ 8,263	+ 3
8 - MISC. NONRESIDENTIAL	58,989	82,707	+ 23,818	+ 40
L OTHER NONRESIDENTIAL	$ 1,566,527 (12%)	$ 1,533,476 (12%)	-$ 33,051	- 2
UNCLASSIFIED	1,719,094 (14%)	2,035,517 (15%)	+ 316,423	+ 18
TAL NONRESIDENTIAL	$13,111,268 (100%)	$13,153,609 (100%)	+$ 42,341	--
J-1 AND 2 FAMILY	$ 61,577	$ 38,562	-$ 23,015	- 37
K-APARTMENTS	306,330	499,405	+ 193,075	+ 63
L-HOTELS AND MOTELS	127,667	356,092	+ 228,425	+179
M-DORMITORIES	507,832	460,799	- 47,033	- 9
RESIDENTIAL	$ 1,003,406	$ 1,354,858	+$ 351,452	+ 35
TOTAL CONTRACT ORDERS	$14,114,674	$14,508,467	+$ 393,793	+ 3
CONTRACTS AS % OF TOTAL ORDERS	7[illegible]76%	[illegible]76%		

Ex. C

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)

12 MONTHS 1968 COMPARED WITH 12 MONTHS 1967

DODGE PROJECT CLASSIFICATION	CONTRACTS 12 Months 1967	CONTRACTS 12 Months 1968	CHANGE IN 1968 AMOUNT	CHANGE IN 1968 PERCENT
A-STORES AND MERC. BLDGS.	$ 2,189,587	$ 2,788,[illegible]	+$ [illegible]	+ 27
B-OFFICE AND BANK BLDGS.	2,842,[illegible]	[illegible],477,132	+ [illegible]	+ [illegible]
C-WAREHOUSES, GARAGES, SERV. STA.	1,[illegible]	[illegible],120,850	+ 112,[illegible]	+ [illegible]
COMMERCIAL	6,079,732 ([illegible]%)	7,644,627 (34%)	+$ 1,[illegible],895	+ 2[illegible]
MANUFACTURING	3,70[illegible],72[illegible] ([illegible]%)	3,767,[illegible]31 (17%)	+ 66,[illegible]	+ 2
EDUCATIONAL AND SCIENCE	5,216,1[illegible] ([illegible]%)	5,[illegible]47,262 (24%)	+ 131,[illegible]	+
HOSPITALS AND HEALTH BLDGS.	1,873,269 (9%)	2,114,271 (9%)	+ 241,002	+ 1[illegible]
5 - PUBLIC	$ 958,856	$ 1,111,993	+$ 153,137	+ 16
6 - RELIGIOUS	793,407	777,597	- 15,810	- 2
7 - AMUSE., SOCIAL & RECREATIONAL	934,047	963,758	+ 119,711	+ [illegible]
8 - MISC. NONRESIDENTIAL	682,678	795,401	+ 112,723	+ 17
L OTHER NONRESIDENTIAL	$ 3,268,988 (16%)	$ 3,438,749 (16%)	+$ 169,761	+ 1[illegible]
TAL NONRESIDENTIAL	$20,138,860 (97%)	$22,512,503 (100%)	+$ 2,373,643	+ 12
J-1 AND 2 FAMILY	$[illegible],[illegible],[illegible]	$[illegible],[illegible],[illegible]	+$ 1,[illegible],[illegible]	+ [illegible]
K-APARTMENTS	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	+ [illegible],[illegible]	+ [illegible]
L-HOTELS AND MOTELS	[illegible],[illegible]	[illegible],[illegible]	+ 118,[illegible]	+ [illegible]
M-DORMITORIES	[illegible],[illegible]	[illegible],[illegible]	- [illegible],[illegible]	- [illegible]
OTHER SHELTER	12,[illegible]	12,[illegible]	+ [illegible]	+ [illegible]
RESIDENTIAL	$[illegible],[illegible],[illegible]	$[illegible],[illegible],[illegible]	+$ [illegible],[illegible]	+ [illegible]
TOTAL BUILDING	$41,[illegible],[illegible]	$47,[illegible],[illegible]	+$ [illegible],[illegible]	+ [illegible]

P. & F. CORBIN

CONTRACT ORDERS RECEIVED (ORDERS BY D.P.C.)

12 MONTHS 1968 COMPARED WITH 12 MONTHS 1967

DODGE PROJECT CLASSIFICATION	CONTRACT ORDERS 12 Months 1967	CONTRACT ORDERS 12 Months 1968	CHANGE IN 1968 AMOUNT	CHANGE IN 1968 PERCENT
A-STORES AND MERC. BLDGS.	$ 315,902	$ 363,602	+$ 47,700	+ 15
B-OFFICE AND BANK BLDGS.	631,079	588,219	- 42,860	- 7
C-WAREHOUSES, GARAGES, SERV. STA.	10,269	18,808	+ 8,539	+ 83
COMMERCIAL	$ 957,250 (10%)	$ 970,629 (10%)	+$ 13,379	+ [illegible]
MANUFACTURING	569,411 (6%)	799,397 (8%)	+ 229,986	+ 4[illegible]
EDUCATIONAL AND SCIENCE	4,395,167 (48%)	4,196,807 (44%)	- 198,360	- 5
HOSPITALS AND HEALTH BLDGS.	1,230,144 (13%)	1,214,113 (13%)	- 16,031	- 1
5 - PUBLIC	$ 230,995	$ 324,697	+$ 93,702	+ 4[illegible]
6 - RELIGIOUS	362,572	303,440	- 59,132	- 1[illegible]
7 - AMUSE., SOCIAL & RECREATIONAL	94,972	122,429	+ 27,457	+ 29
8 - MISC. NONRESIDENTIAL	41,020	36,072	- 4,948	- 12
L OTHER NONRESIDENTIAL	$ 729,559 (8%)	$ 786,638 (8%)	+$ 57,079	+ [illegible]
UNCLASSIFIED	1,331,451 (15%)	1,473,443 (16%)	+ 141,992	+ 11
TAL NONRESIDENTIAL	$ 9,212,982 (100%)	$ 9,441,027 (99%)	+$ 228,045	+ 2
J-1 AND 2 FAMILY	$ 75	$ 136,333	+$ 136,258	-
K-APARTMENTS	22,505	90,983	+ 68,478	+30[illegible]
L-HOTELS AND MOTELS	606,446	1,019,077	+ 412,631	+ 68
M-DORMITORIES	29,504	185,859	+ 156,355	+530
RESIDENTIAL	$ 658,530	$ 1,432,252	+$ 773,722	+11[illegible]
TOTAL CONTRACT ORDERS	$ 9,871,512	$10,873,279	+$ 1,001,767	+ 10
CONTRACT AS % TOTAL ORDERS	71%	75%		

Exhibit Report

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)

DODGE PROJECT CLASSIFICATION	CONTRACTS 12 Month 1970	CONTRACTS 12 Month 1969	CHANGE IN AMOUNT	CHANGE IN PERCENT
A-STORES AND MERC. BLDGS.	2,910,050	2,927,238		
B-OFFICE AND BANK BLDGS.	4,575,672	5,315,022		
C-WAREHOUSES, GARAGES, SERV. STA.	1,533,953	1,442,159		
COMMERCIAL	9,019,675	9,684,419		-7%
MANUFACTURING	3,603,416	3,887,537		-7%
EDUCATIONAL AND SCIENCE	5,156,548	5,485,891		-6%
HOSPITALS AND HEALTH BLDGS.	2,792,646	2,784,201		
S - PUBLIC	1,006,341	1,139,619		-12%
S - RELIGIOUS	577,723	670,677		-14%
W - AMUSE., SOCIAL & RECREATIONAL	1,118,776	1,099,259		+2%
X - MISC. NONRESIDENTIAL	905,275	888,995		+2%
OTHER NONRESIDENTIAL	3,308,115	3,799,550		
TAL NONRESIDENTIAL	24,180,400	25,640,598		-6%
J-1 AND 2 FAMILY	15,382,958	16,068,051		
K-APARTMENTS	7,735,803	7,670,757		
L-HOTELS AND MOTELS	842,215	972,037		
M-DORMITORIES	443,354	525,530		
OTHER SHELTER	23,210	24,536		
RESIDENTIAL	24,427,540	25,260,911		-3%
TOTAL BUILDING	48,607,940	50,901,509		-5%

CONTRACT ORDERS RECEIVED (ORDERS BY D.P.C.)

DODGE PROJECT CLASSIFICATION	CONTRACT ORDERS		CHANGE IN AMOUNT	CHANGE IN PERCENT
A-STORES AND MERC. BLDGS.	293,522	366,574		
B-OFFICE AND BANK BLDGS.	1,458,671	1,390,671		
C-WAREHOUSES, GARAGES, SERV. STA.	58,206	97,831		
COMMERCIAL	1,810,399	1,855,076		
MANUFACTURING	544,595	806,179		
EDUCATIONAL AND SCIENCE	4,972,902	5,541,482		
HOSPITALS AND HEALTH BLDGS.	2,138,073	2,231,163		
S - PUBLIC	597,475	681,412		
S - RELIGIOUS	313,631	411,782		
W - AMUSE., SOCIAL & RECREATIONAL	299,440	303,081		
X - MISC. NONRESIDENTIAL	162,182	175,414		
OTHER NONRESIDENTIAL	1,258,231	1,554,808		
UNCLASSIFIED	2,263,972	2,516,982		
TAL NONRESIDENTIAL	13,102,828	14,532,803		
J-1 AND 2 FAMILY	25,898	75,871		
K-APARTMENTS	580,162	739,397		
L-HOTELS AND MOTELS	465,250	439,866		
M-DORMITORIES	186,874	299,407		
RESIDENTIAL	1,258,231	1,544,808		
TOTAL CONTRACT ORDERS	14,361,059	16,077,611		
CONTRACT AS % TOTAL ORDERS	75%	77%		

DODGE CONSTRUCTION CONTRACTS (THOUSANDS OF DOLLARS)
12 Months 1970 Compared with 12 Months 1969

DGE PROJECT CLASSIFICATION	CONTRACTS 12 Months 1969	CONTRACTS 12 Months 1970	CHANGE IN AMOUNT	CHANGE IN PERCE
STORES AND MERC. BLDGS.	$ 2,925,003	$ 2,910,050	- $ 14,953	- 0.5%
OFFICE AND BANK BLDGS.	5,357,456	4,575,672	- 781,784	- 15%
WAREHOUSES, GARAGES, SERV. STA.	1,411,492	932,462	- 509,030	- 36%
MMERCIAL	$ 9,723,951 (38%)	$ 8,418,184 (36%)	-$1,305,767	- 13%
NUFACTURING	3,887,408 (15%)	3,603,416 (12%)	- 283,992	- 7%
UCATIONAL AND SCIENCE	5,479,951 (22%)	5,156,548 (23%)	- 323,463	- 6%
SPITALS AND HEALTH BLDGS.	2,779,901 (10%)	2,792,646 (13%)	+ 12,745	+ 0.5%
PUBLIC	1,140,780	1,006,341	- 134,439	- 12%
RELIGIOUS	669,481	577,723	- 91,758	- 14%
AMUSE., SOCIAL & RECREATIONAL	1,099,707	1,118,776	+ 19,069	+ 2%
MISC. NONRESIDENTIAL	885,848	905,275	+ 19,427	+ 2%
OTHER NONRESIDENTIAL	$ 3,795,516 (15%)	$ 3,608,115 (16%)	- $ 187,701	- 5%
L NONRESIDENTIAL	$ 25,667,027 (100%)	$ 24,180,400 (100%)	-$1,486,627	- 6%
1 AND 2 FAMILY	16,067,339	15,382,958	- 684,381	- 4%
APARTMENTS	7,626,719	7,735,803	+ 187,701	+ 1.5%
HOTELS AND MOTELS	975,303	842,215	- 133,088	- 14%
DORMITORIES	525,511	443,354	- 82,157	- 16%
OTHER SHELTER	24,536	23,210	- 1,326	- 5%
SIDENTIAL	$ 25,219,408	$ 24,427,540	- $ 791,868	- 3%
TOTAL BUILDING	$ 50,886,435	$ 48,607,940	-$2,278,495	- 4.5%

CONTRACT ORDERS RECEIVED (ORDERS BY D.P.C.)
12 Months 1970 compared with 12 Months 1969

GE PROJECT CLASSIFICATION	CONTRACT ORDERS 12 Months 1969	CONTRACT ORDERS 12 Months 1970	CHANGE IN AMOUNT	CHANGE IN PERCE
STORES AND MERC. BLDGS.	$ 385,407	$ 442,421	+ $ 57,014	+ 15%
OFFICE AND BANK BLDGS.	754,362	497,127	- 257,235	- 34%
WAREHOUSES, GARAGES, SERV. STA.	36,208	63,647	+ 27,439	+ 76%
MMERCIAL	$ 1,175,979 (11%)	$ 1,003,532 (10%)	- $ 172,447	- 15%
NUFACTURING	723,421 (7%)	243,008 (2%)	- 480,413	- 66%
UCATIONAL AND SCIENCE	4,695,840 (43%)	3,916,576 (44%)	- 779,264	- 17%
SPITALS AND HEALTH BLDGS.	1,493,940 (14%	1,258,150 (11%)	- 235,790	- 16%
PUBLIC	$ 344,537	380,105	+ 35,568	+ 10%
RELIGIOUS	308,261	243,688	- 64,573	- 21%
AMUSE., SOCIAL & RECREATIONAL	131,897	161,057	+ 29,160	+ 22%
MISC. NONRESIDENTIAL	104,101	70,714	- 33,387	- 32%
OTHER NONRESIDENTIAL	$ 888,796 (8%)	$ 855,564 (7%)	- $ 33,232	- 4%
CLASSIFIED	1,846,702 (17%)	2,571,406 (26%)	+ 724,704	+ 39%
L NONRESIDENTIAL	$ 10,824,676 (100%)	$ 9,848,237 (100%)	- $ 976,439	- 9%
1 AND 2 FAMILY	301,161	355,333	+ 57,172	+ 18%
APARTMENTS	195,275	67,857	- 127,418	- 65%
HOTELS AND MOTELS	806,193	829,814	+ 23,621	+ 3%
DORMITORIES	130,982	122,661	- 8,321	- 6%
SIDENTIAL	$ 1,443,565	$ 1,375,665	- $ 67,900	- 5%
TOTAL CONTRACT ORDERS	$ 12,268,241	$ 11,223,902	- $1,044,339	- 8.5%
ONTRACT AS % TOTAL ORDERS	75%	71%		

Ex. F

MASTER KEY ANTITRUST LITIGATION

ANALYSIS OF SALES - PUBLIC v. PRIVATE
EMHART CORPORATION

1969 Dodge Project Classification	Contract Orders	% of Total
PUBLIC		
Educational & Science	$10,237,322	51.8
Hospitals & Health Buildings	3,725,103	18.9
Dormitories	430,389	2.2
Public (Other)	1,025,949	5.2
Total Public	$15,418,763	78.1
PRIVATE		
Office & Bank Buildings	$ 2,145,033	10.9
Apartments	934,672	4.7
Hotels & Motels	1,246,059	6.3
Total Private	$ 4,325,764	21.9

MASTER KEY ANTITRUST LITIGATION

ANALYSIS OF SALES - PUBLIC v. PRIVATE
EMHART CORPORATION

1970 Dodge Project Classification	Contract Orders	% of Total
PUBLIC		
Educational & Science	$ 8,889,478	50.9
Hospitals & Health Buildings	3,396,223	19.4
Dormitories	309,535	1.8
Public (Other)	977,580	5.6
Total Public	$13,572,816	77.7
PRIVATE		
Office & Bank Buildings	$ 1,955,798	11.2
Apartments	648,019	3.7
Hotels & Motels	1,295,064	7.4
Total Private	$ 3,898,881	22.3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

AFFIDAVIT OF MAILING NOTICE OF PARTIAL SETTLEMENT
(ILCO CORPORATION)

LEE A. FREEMAN, JR., being first duly sworn on oath, deposes and says:

1. I am co-liaison counsel for plaintiffs in the above-captioned litigation and special counsel for the States of Illinois, Indiana, Michigan, Minnesota, Wisconsin, Colorado, South Dakota and West Virginia, and the Commonwealths of Kentucky and Pennsylvania.

2. On June 15, 1976, I caused to be mailed, via first class, postage prepaid, 128 copies of a "Notice of Partial Settlement" (Ilco Corporation) to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings, as provided in this Court's Order of June 11, 1976. A copy of the Notice of Partial Settlement is attached as Exhibit "A" and the mailing lists used for giving notice are attached as Exhibit "B".

3. To supplement mailed notices, I caused the Notice of Partial Settlement to be published in all regional editions of the Wall Street Journal on June 15, 1976, as required by this Court. A copy of the publication is attached as Exhibit "C".

Further the Affiant sayeth not.

Lee A. Freeman Jr.
LEE A. FREEMAN, JR.

Subscribed and Sworn to before
me this 23rd day of June, 1976.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45

NOTICE OF PARTIAL SETTLEMENT

You have previously been notified by Notice of March 29, 1976, of these class actions.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby further notified of a proposed settlement agreement between plaintiffs and defendant Ilco Corporation, which settlement will be presented to the Court for approval on June 28, 1976.

Partial Settlement with Ilco Corporation

Ilco Corporation, a defendant in this litigation, has sales which represent approximately five per cent (5%) of the total sales of contract hardware by all four defendants.

Ilco Corporation has agreed to pay the aggregate amount of Eighty-Five Thousand Dollars ($85,000) in final settlement of all claims against it in this litigation, including the claims of plaintiffs, intervenors and class members.

The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in twelve (12) monthly installments of Five Thousand Dollars ($5,000) each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses incurred by plaintiffs.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further, Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from its parent company, Unican Security Systems, Ltd., a Canadian

Exhibit "A"

corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for Monday, June 28, 1976, to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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THE WALL STREET JOURNAL
Tuesday, June 15, 1976

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:
MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

NOTICE OF PARTIAL SETTLEMENT

You have previously been notified by Notice of March 29, 1976, of these class actions.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby further notified of a proposed settlement agreement between plaintiffs and defendant Ilco Corporation, which settlement will be presented to the Court for approval on June 28, 1976.

Partial Settlement with Ilco Corporation

Ilco Corporation, a defendant in this litigation, has sales which represent approximately five per cent (5%) of the total sales of contract hardware by all four defendants.

Ilco Corporation has agreed to pay the aggregate amount of Eighty-Five Thousand Dollars ($85,000) in final settlement of all claims against it in this litigation, including the claims of plaintiffs, intervenors and class members.

The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in Twelve (12) monthly installments of Five Thousand Dollars each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses incurred by plaintiffs.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from its parent company, Unican Security Systems, Ltd., a Canadian corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor, and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for Monday, June 28, 1976 to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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(537)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- x
:
IN RE: :
: M.D.L. #45
MASTER KEY ANTITRUST LITIGATION :
:
- x

MAY 21, 1976
HARTFORD, CONNECTICUT

B E F O R E:

HON. M. JOSEPH BLUMENFELD, U.S.D.J.

IN CHAMBERS CONFERENCE

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MR. FREEMAN: Mr. Donelan was in a hurry to accomplish what he's trying to accomplish, so we will let him make his presentation.

MR. DONELAN: It's very simple, your Honor. We have, over the last six or seven weeks, since we were last here - I forget the date, the last pre-trial conference where you really set it up and put the wheels in motion - we have been engaged in some negotiations essentially to convince Mr. Freeman and his horde of admirerers or clients, depending on which, that he should let my people go.

We arrived at a figure. The figure as compare to Mr. Dixon's grand numbers is nothing - it's $85,000; $25,000 in a certified check which is right here and $60,000 in a letter of credit to be paid in twelve $5,000 installments - and I have this all in writing for your Honor - twelve $5,000 installments drawn upon the First National Bank of Boston.

We were discussing just now, prior to the conference here, Mr. Freeman's and Mr. Montague's very legitimate, in my judgment, concerns that they be satisfied on behalf of all of their clients that this is a fair settlement under the circumstances. And I specifically don't address myself to the all

cation; that's their party, not mine. I have no interest in that. I'm talking about the amount only, from my client.

THE COURT: Right.

MR. DONELAN: I have supplied them, prior to this time, the annual statements of the Ilco Corporation and also the Unican Corporation, which is the parent corporation. This is the Canadian Company that bought Ilco in 1972.

I have presented them with those certified statements from Peat, Marwick & Mitchell, at least in an effort to convince them that my client couldn't pay any more than this and that pursuant of my client further was a needless exercise, a useless gesture, all the other cliches that go with it.

We are down to now in Fitchburg, so that your Honor will know what's happening, 85 working employees in the bargaining unit and enough employees to make up 107 in the management end.

As far as the subject matter of this suit is concerned, architectural hardware, we have been out of that business some three years now and are manufacturing only replacement parts for those jobs which we now have.

The master key capability, the records of all the master keys around the country, and all that, is for sale, gentlemen, and subject to any laws which might bear on it we would certainly entertain any offer. But we are trying actively to sell it right now.

The company, and I would appreciate it if this stays -- I'll risk the publication of your record, but if the rest of you let it stay with you as to your clients - the company right now, your Honor, is in serious jeopardy with the labor union. We have notified the labor union that we intend to shut down completely and that we are prepared to bargain, as we are required to do under the law, the terms and conditions of the shutdown.

That, while not terribly dramatic, is a difficult one when that I understand from my partner who is handling the labor that the pension fund is deficient by pretty close to a hundred thousand dollars right now. And I don't know when we're going to get that or where we're going to get that.

It's relevance is simply that I would expect the labor union to attempt to bring an injunction against the dissolution of any further Ilco aspects very shortly, or attempt to try to get one, anyway,

in the Federal Court in Boston. And I've been on the alert now for ten days to go down and see if I can't defend against that.

They haven't done it yet and maybe they won't, I don't know. But that's part of the picture.

Back to the concerns of Mr. Montague and Mr. Freeman. They say that in connection with another one of their cases they've had a chance to meet with their co-counsel and representatives from around the country recently, and they have gotten some questions as to are they letting this prize Ilco out too easily and how do they justify Ilco if the Unican Corporation, which is Ilco's parent, continues to function. And it has a plant in Rocky Mount, North Caro[illegible]a, which is manufacturing hardware for Ilco and selling it.

I also gave them a memorandum some time ago in which I laid out, I thought, the law as I saw it on the separate character of Unican as a corporation and Ilco as a corporation. That they sell to one another and that Mr. Fish, who is Chairman of the Board of both, is beyond dispute, that's the fact.

I think I've done as much as I can do to show them that I don't believe that as a matter of law and that as a factual question it would be an ex-

tremely difficult thing to trace liability through Ilco to Unican. Therefore, I think they are justified in saying we will take what we can from the carcass of Ilco, such as it is, and pursue better and more productive areas. And that's really essentially it.

They've asked me for further assurances, such as an affidavit from the president of Ilco, Mr. Fish, that Ilco and Unican are separate entities and are operating in that manner by him. And I have agreed to supply that.

I have also agreed to supply an affidavit from the Secretary of Ilco, my partner, who has had possession of the minute books since 1967 say, whenever it was that we began - "we," Bowditch, Gowetz and Lane - began to represent Ilco Corporation, which would lay out, I think, for the protection of settling counsel here the procession, I think is a fair word, of presidents and loss of executive officers and changes in ownership and policy.

We have acquired between '66 and '68 eight or nine small companies. We've sold every one of the that will possibly get us a nickel off. We've sold our foundry. We have all of the real estate in

Fitchburg for sale now, along with most else at Fitchburg. The factories are for sale.

So that's it. So I am asking this Court to assist us in finding that this is a fair settlement, as required by Rule 23, and asking further if the Court might entertain the thought that the requirement of process for the class members, the notice as required by Rule 23, perhaps be built into the Emhart settlement hearing on June 2nd to avoid the necessity of another huge mailing and to avoid the necessity of perhaps losing the letter of credit which I have as of today, but which I may not have even thirty days from now if the union comes ahead or if other contingencies of that nature occur.

And that's really why I'm here.

THE COURT: I know. This is, at present, merely an oral application, right?

MR. DONELAN: Yes, your Honor.

THE COURT: I can indicate, then, orally that on the basis of a presentation of a motion in writing, supported by a recital of the circumstances as you have outlined them to me here, that I would be, so far as the Court is concerned, inclined to approve the settlement.

So I would suppose that that application might

also be supported by an affidavit from Mr. Freeman, or whoever he has had investigate from their standpoint what the financial condition of the company is and the possibility or responsibility on the part of the parent company in Canada.

I guess he would have to do that anyway to satisfy his co-counsel who always have great ideas as to what should be done.

Mr. Montague?

MR. MONTAGUE: Your Honor, the last thing which you mentioned, an affidavit from us, was really what we were trying to avoid. Because we really don't feel that we have the financial expertise to make a study of their financial position.

THE COURT: When I say from you, I don't mean that it has to be your affidavit; but someone that you have designated, either some accountant or somebody else, to at least exercise that kind of care which, as lawyers for parties, ought to be exercised. Somebody ought to check out to some degree the information that is being provided by Mr. Donelan.

MR. MONTAGUE: Could we ask to get a similar type of affidavit from Mr. Donelan's side?

THE COURT: Who is "we"?

MR. MONTAGUE: I mean the plaintiffs would like

to have a similar type of affidavit on the record from a representative of Ilco.

THE COURT: Well, he proposes to provide some kind of an affidavit as to their financial condition and their present situation with respect to continuation in business.

But I think that from your standpoint, and also from the standpoint of the record and from the Court, that some steps to test or verify the conditions as set forth in the affidavit can be made.

It may require very little. I mean you have certified auditor's reports, you have a way of verifying, through the union or somebody else, the fact that there are proceedings pending with respect to an announced intention to terminate operations. There are a few places you can go to and get something to just check up and verify what has been recited here as to their situation.

MR. DONELAN: We can include the notification to the union in our affidavit. That's easy.

THE COURT: Yes.

MR. FREEMAN: I think the condition of Ilco is fairly apparent from their financial statements and we've made a thorough analysis of their state-

ments.

I think the problem arises, first of all, the settlement bears no relationship to Ilco's potential liability during the conspiratorial period.

THE COURT: That's true. I don't know whether that's a unique situation or not.

MR. FREEMAN: I think it has happened in other cases where --

THE COURT: You know, you've got a dying business, it hasn't got the money to pay.

MR. FREEMAN: Second, given the inadequate size of that settlement in relation to the potential liability and really the small amount of settlement it wouldn't be worth while to publish notice. So that puts an added burden on us, we feel, and probably the Court.

THE COURT: What do you suggest as to notice?

MR. FREEMAN: What?

THE COURT: Some notice has to be given. The rules require it.

MR. MONTAGUE: Your Honor, may I just suggest the only case that I know of where a Court has said where there's a small defendant who settles, where it will not have any significant effect on the financial outcome of the case, no notice is neces-

sary, was Judge Fulham.

THE COURT: Who?

MR. MONTAGUE: Judge Fulham in the Eastern District of Pennsylvania.

THE COURT: What case was that?

MR. MONTAGUE: Philadelphia Electric vs. Anaconda American Brass Company.

THE COURT: Sounds like very sound, rich companies to me.

MR. MONTAGUE: No. One little defendant. And it's just the part in green is the section which deals with that (indicating).

THE COURT: Well, he did it, but he didn't --

MR. MONTAGUE: That's the only case I know of where a settlement --

THE COURT: Well, he recognized the problem.

MR. MONTAGUE: Yes.

THE COURT: And he says that it's been settled.

I guess the only one, really, who is exposed to risk of any kind would be the settling defendant. Because this is an order acknowledging the settlement, but making no ruling with respect to whether the notice is adequate to foreclose any of the members of the class.

So theoretically he left it open. If we follow

that - and I suppose Ilco is the only one that's really jeopardized by lack of notice to members of the class.

MR. DONELAN: What would be left, your Honor, would be several buildings in Fitchburg, all of which are heavily mortgaged.

THE COURT: Well, none of which are under attachment, anyway.

MR. DONELAN: No.

THE COURT: I don't think you're taking any risk, from what you tell me.

MR. DONELAN: No, sir. I don't see it as a high one.

THE COURT: Yes.

And to some extent there was a suggestion that a partial notice could be given, or a notice that would reach some by notification to all other counsel for plaintiffs who have appeared in the case and that would, I think, with that notice that this is going to be part or be acted upon at the time of Emhart's offer to settle is acted upon, we take some of them out - take those who are now represented out of it.

And who is left? The unknown class members or unrepresented. And I guess most of them are repre-

sented.

MR. MONTAGUE: We've gotten in the private class about 71 lawyers or 72 lawyers who have entered their appearances. We've gotten many letters from members of the class saying that they would like to be kept apprised, or please send all future notices to the secretary of the company, or something like that.

We have not compiled all of those addresses yet. We have compiled all of the addresses for the entries of appearance, or even letters from lawyers.

THE COURT: Put somebody on it.

MR. FREEMAN: It's a manageable task.

We have the same thing in the public class actions. There's perhaps 150-200 people who have expressed more than a passing interest who have said, "What do I have to do to stay involved? Please keep me informed" - besides the people who have entered an official appearance.

So we could probably do that rather quickly.

THE COURT: When is this other hearing scheduled?

MR. DONELAN: June 2nd, your Honor.

MR. FREEMAN: We have one problem, though.

I was going on to the one problem that's been raised by other counsel and has been a source of dis-

cussion between myself and Mr. Donelan; and that's the relationship between Unican and Ilco, and the information perhaps in someone's mind that Ilco has been allowed to wither and disappear at the expense of Unican's operations and that Unican is now manufacturing and selling hardware under the Ilco trademark and is a profitable operation and for reasons --

THE COURT: Unican is not a party here.

MR. FREEMAN: Unican isn't a party. But there are a lot of intra corporate transfers between affiliates.

We simply want to make sure that those transfers have occurred at arm's length, and our accountant has a series of questions we need.

THE COURT: Well, you have a problem. The legal theory upon which you could reach the parent would be either disregard the corporate entity - that would be one. And I'm not sure whether they could be brought in now as a party.

MR. FREEMAN: We are fairly convinced they cannot. That's why we are agreeing to the settlement.

THE COURT: And not give them the benefit of the statute.

MR. FREEMAN: Right.

THE COURT: If that's so, if you can't bring them in now without giving them the benefit of the statute, then the remaining theory is that these were fraudulent conveyances at the time they were made. And you would have to show then that whatever went from the subsidiary to the parent rendered the parent insolvent at that time. I guess you would have to show that.

I don't think their intention would matter. You would also have to show that there was an intent, I guess. In bankruptcy you would.

MR. FREEMAN: An intent to render the subsidiary insolvent.

THE COURT: Yes, I think so.

At least you would have to show that it rendered them insolvent at that time, if you're going to go on the theory of a fraudulent conveyance. That's my recollection of how that runs.

MR. FREEMAN: I just wanted to make the Court aware of that problem. I think we can satisfy ourselves.

THE COURT: You can make me aware of it, and you can satisfy yourself and you may have to satisfy your friends who are also counsel in here.

But I don't know anything about the relation-

ship between these companies. One is a Canadian corporation and one is down here. I take it you said that they had a dozen other businesses?

MR. DONELAN: Not that many, your Honor. But there is another plant in North Carolina which sells to Ilco or buys from Ilco. I think it's both.

THE COURT: They deal with a sub.

MR. DONELAN: Yes, they do.

THE COURT: Another sister corporation?

MR. DONELAN: Yes, they do. And that's a fact. It's all right there in the statements.

THE COURT: That doesn't mean that you disregard the corporate.

MR. McELHINNY: Ilco is insolvent, isn't it?

THE COURT: Not yet.

MR. McELHINNY: I mean the potential liability that you've been carrying there under the books? Wouldn't it, technically?

MR. DONELAN: If you valued this antitrust claim at a fraction of what Mr. Freeman values it at, yes, of course it is.

But, in fact, no, not quite yet.

THE COURT: Not yet, no.

MR. FREEMAN: Well, let me say it another way. We have looked at both the status of Ilco

Corporation and the relationship of Ilco to Unican to try to satisfy ourselves that this was all they could pay and there was no way to reach Unican. I simply wanted to advise your Honor that we had these questions and we were exploring these questions with an accountant, to make sure there was no transfer and no effort to evade liability here by shifting the operations to Unican.

THE COURT: You want to assure me?

MR. FREEMAN: Yes.

MR. POTTENGER: Have you completed that examination? I gathered that you had not.

THE COURT: You don't have a claim against them.

MR. FREEMAN: No. But I think it is our obligation to assure the Court, on behalf of everybody, so that we are protecting the class members in this situation.

THE COURT: All right.

That's why I wanted some kind of an affidavit from you, or somebody else, that this has been done, to satisfy the record.

MR. FREEMAN: To finish off that inquiry, it might take a day of questions by our accountant, his Secretary and Controller. But I think it can be done quickly.

THE COURT: All right.

Then I will inform you now that I will approv some sort of notice that you propose to be added to whatever notice is going out now. There is some notice still to go, isn't there?

MR. MONTAGUE: No, your Honor. That's the problem.

THE COURT: Then I will approve an amendment to the notice as you propose, to be served on all counsel. That's a notice to counsel with instructions to them to notify their clients or the members of the class whom they represent.

As I say, that's going to reach most of them, maybe.

MR. McELHINNY: What about clients, everyone else who's written in response to not only counsel but anyone who has written in response to the original notice?

THE COURT: How many of those do we have?

MR. MONTAGUE: There are quite a few, your Honor. I would say several hundred.

MR. McELHINNY: I don't mean the ones who hav opted out.

MR. MONTAGUE: I hate to throw out a wrench o this thing, but I have some serious problems with

this procedure.

Number one, we don't have a settlement agreement yet with Ilco in writing.

Number two, assuming that we work that out over the weekend and we can get notice out by Monday, which may be difficult, but at least Tuesday - that means that notice is going to be received by the attorneys, knowing the mails, maybe by Thursday, most probably by Friday. That's the day before Memorial Day weekend. So that they are going to really have no opportunity to communicate with their clients.

I think that we run the risk of opening ourselves up to much greater attack by that type of procedure than by having no notice on this, having the presentation to the Court following what Judge Fulham did and have Ilco assume the risks.

I feel very queasy about this type of fast notice, knowing how some of the Courts of Appeals have jumped on Courts where they felt that the notice wasn't sufficient in time. I'm just giving you my thoughts because they do give me trouble.

MR. FREEMAN: Of course, it doesn't have to be tied to the Emhart settlement. If there's a hybrid form of notice we could do it on any conven-

ient day and give the people enough time within which to respond.

THE COURT: The notice of the Emhart settlement is set for a hearing on what day?

MR. FREEMAN: June 2nd.

MR. MONTAGUE: That's a week from next Wednesday.

THE COURT: If we send out the notice about this you could have it for June 16th. Is that what you are saying?

MR. FREEMAN: That's what I would say.

THE COURT: On the separate settlement. Right?

Any problem with you? You're getting some benefit from the notice.

MR. DONELAN: I think you are absolutely right your Honor.

The thing that I wonder about is Mr. Montague, I don't think, is quite correct. The settlement agreement draft in final is right here, ready to be signed by me, and we had discussed this quite thoroughly, at least Mr. Freeman and myself. It tracks Mr. Dixon's fine draftsmanship. You will find it quite reminiscent. That's one.

The second thing is that he says that he's worried about a rushed or a too fast action on thi

and that this may bring problems, questions, process under Rule 23.

Then in the next breath we hea that he has case authority that the Court in a situation of this type can ignore 23 and do no injustice to the statute.

It seems to me that what you have proposed here, which is a quick notice to people who are already in the process of examining the question of fairness of settlement on some multi millions of dollars, what difference would it make if we had sent out a notice that the Emhart settlement was $7,585,000. I really don't think that there would be any great injustice done.

Now, the real question is whether this defendant should be out of the picture from their point of view. I'm quick to say that. It isn't the amount of money from the protection of Mr. Freeman and Mr. Montague. I do recognize that.

But they had been working on that matter for some time. There are no counsel who have a voice - I'm speaking what I think, not what I know now, Mr. Freeman - but it does not seem to me that any counsel which he really has to listen to are unaware of this development. It isn't as if nobody ever heard

of the fact that Ilco is going to get out, or is going to try and get out until next Wednesday or Thursday through the U.S. mail. It isn't that at all.

THE COURT: The upshot of all this being what

MR. DONELAN: Is that I think that your Honor's suggestion that an amended notice go out and that we try for it on the 2nd is worth trying.

MR. McELHINNY: The problem with that is that we're not interested in counsel persuading Mr. Freeman so much as we are interested in people bringing information to the Court.

MR. DONELAN: I view it as the same thing.

MR. McELHINNY: No. Except it would be the counsel who have not been working with Mr. Freeman I would think, that would be more likely --

MR. DONELAN: I view it as the same thing.

Great. I think the responsibility of the Court is to make sure that the class is protected. I quite agree with that and, of course, whatever time is necessary we must do.

THE COURT: As far as the Court is concerned, your representation here today submitted in support of the motion and supported by both of some affian or more than one, together with a similar affidavi

from certain persons selected by Mr. Freeman, would satisfy the Court.

This hasn't just happened between yesterday and today. I know that.

MR. DONELAN: Yes, sir.

THE COURT: You've been protecting the situation of your company since the inception of this case. So this has been an ongoing and open situation that you've made available for examination.

MR. DONELAN: Yes, sir.

THE COURT: So I'm not worried about as far as the Court's approval is concerned.

As I said at the outset, the only thing I'm concerned about is whether you would be protected from members of the class who might say, well, I didn't really get notice of this thing and I don't think it's a fair deal.

So he would have to show that lack of notice somehow jeopardized him. And if there isn't anything in the picture that he can come up with, then he hasn't been prejudiced really.

MR. FREEMAN: The problem is, your Honor, I think that these sort of notices really percolate. I think even the mailed notice out to the selected two hundred will mean that it's talked about, that

people will consult one another about it who may have an interest in the dismissal of Ilco from the litigation. We don't know.

They may have not the information we have, some other information. I'm just afraid that giving them two or three days on which to act prior to the June 2nd hearing would not be sufficient, once we've determined that they should be given some kind of notice. And I really don't see the prejudice in doing it two weeks later.

THE COURT: Yes. What's your hitch?

MR. DONELAN: None.

THE COURT: All right. Let's do it that way.

Now, someone suggested that, in addition, at least some notice by publication ought to be given. One issue of the Wall Street Journal, for example.

How much does that run to?

MR. FREEMAN: I'm not sure. The figure 5 or 15,000 sticks in my mind.

MR. POTTENGER: In the national edition?

MR. FREEMAN: Yes. It's very expensive.

MR. POTTENGER: That's for how much, though? A quarter page?

MR. FREEMAN: Well, no. Probably an eighth of a page.

THE COURT: I'll settle for half.

MR. FREEMAN: It was surprisingly expensive.

MR. McELHINNY: The number 5,000 sticks in my mind.

MR. POTTENGER: I think that's what it was in the ITT case.

THE COURT: I'm not sure whether that was just for each edition.

MR. POTTENGER: That was for the national edition.

MR. FREEMAN: And we got a lot of letters in from people who read it in the Wall Street Journal. I think we would cover those same people if we assembled the two or three hundred letters that we have and mail them out again. That's what I meant by the percolation principle.

I think they're all down in Wall Street and the other commercial centers, and when one person gets one of these they put them on the wire. I think the telephone companies put them on a telex and the stock brokerage houses put them on telex and send them around.

THE COURT: They are concerned with what it's going to do with the company, not what it's going to do for the class.

MR. FREEMAN: No.

But within the financial community that reads the Wall Street Journal I think they have their own system of disseminating this information.

THE COURT: But they're not getting it.

MR. FREEMAN: Well, they would get it by the letters. The letters would go to these people because most --

THE COURT: But they have an obligation, I guess, to certain people if they have a notice in the paper, to call attention to it, the fact that they have a notice in their paper. I don't know.

As I say, I think it would be a good idea. I don't know how much it will cost. It wouldn't have to be that big a notice. Just the ordinary kind of a notice might not be satisfactory, but something --

MR. POTTENGER: It could be like a tombstone that lets people know --

MR. FREEMAN: They're no longer responsible for his or her debts.

MR. POTTENGER: That's right.

MR. FREEMAN: Okay.

THE COURT: Well, I think it looks a little classier, anyway. We're giving the time and we're

giving the direct notice to the people who are most likely and who have demonstrated an interest.

MR. MONTAGUE: Do you want the mailing to go to everyone who has written in?

THE COURT: Yes.

MR. DONELAN: We appreciate the implied compliment, at any rate.

We are a company that had probably, at the height of any of the years that they allege a problem, gross sales of $7 million in architectural hardware.

One of the problems that's been inherent in this case right along is we have been treated by them as being in the same category as my two more affluant neighbors here to my right and the absent Mr. Dixon. And we just weren't never in that league, your Honor. So we appreciate that.

THE COURT: Well, you know, that part is all over. He's been telling you that for years and you've been responding with something else, and it's a dead issue now.

MR. FREEMAN: It has nothing to do with their performance in the hardware field. I think it has to do with their personnel problems.

We have a letter here written by the Chairman

of their Board and he says it was compiled by the President, Mr. Saginaw. But Mr. Saginaw submitted his resignation and left in a huff on Friday, and this matter will be dealt with at the next Ilco Board meeting. I think they had problems that far transcended this case.

MR. DONELAN: No doubt about it. Mr. Saginaw served the company for a quarter of a million dollars.

THE COURT: All right.

So what else is there?

MR. MONTAGUE: We need approval of the form of notice and a date when it should go out, and the hearing.

THE COURT: I'll approve it.

MR. DONELAN: Well, the hearing date is the 16th, isn't that correct? June 16th?

MR. MONTAGUE: We don't have a notice yet. We don't a form of notice yet.

Just what we agree to as satisfactory?

THE COURT: Sure.

MR. POTTENGER: Could they submit it to us, do you think, or even call it in, or something like that?

MR. DONELAN: I think we should submit it to you. I think you should see it before it goes out.

THE COURT: Well, I'll know what it is, anyway. Call it in.

MR. DONELAN: I'll attempt to have this motion and supporting affidavits in here just as soon as I can put it together, your Honor.

THE COURT: Well, listen, if there's no particular sweat for you, I could put it to June 21st.

MR. FREEMAN: I'd rather have an extra week.

MR. DONELAN: Well, I'd like to get it done.

THE COURT: Well, you can have it done.

MR. DONELAN: June 21st is fine with me. That's all right.

MR. POTTENGER: Then you gentlemen will have your affidavits in here so that notice --

THE COURT: What date are we talking about? I'll go to the 22nd or the 28th.

MR. DONELAN: The 22nd would be better for me.

THE COURT: The 22nd, all right. Ten a.m., Ilco settlement hearing.

Anything else?

MR. MONTAGUE: When should the notices be mailed by?

MR. McELHINNY: As soon as possible.

MR. FREEMAN: As soon as possible.

THE COURT: Sure.

MR. POTTENGER: With a deadline of what, Wednesday?

THE COURT: Put it in your motion. The notic will be in by such and such a date, and just add that in the motion. Or you can divide it into different motions.

Motion re notice of the settlement, in the following form, and to certain people, and by such and such a date, deposited in the mail, and by such and such a date the following notice be published in the Wall Street Journal by such and such a date. By that time you will know the dates.

MR. POTTENGER: What about the cost of notice

MR. FREEMAN: Yes, we're going to have to negotiate.

THE COURT: It gives you a whole month, doesn't it?

MR. FREEMAN: Almost.

MR. McELHINNY: I don't think there's any need to set limits on dates to file objections or file notices, because all of that would have been done. I mean you can just leave all that out and just give notice of the date that the hearing is going to be

MR. POTTENGER: And that the papers are on fi

here.

THE COURT: Well, you decide what you want in your notice, that's all.

MR. FREEMAN: I think in view of the short date we will probably have to say that anyone who wants to be heard on that date will be heard. He doesn't have to file papers to qualify to be heard.

MR. POTTENGER: What about the cost of notice, Judge?

MR. McELHINNY: I think they're going to negotiate.

MR. FREEMAN: I hope Ilco's going to pay them.

THE COURT: Well, see what they are.

MR. DONELAN: That's what makes me smile.

MR. FREEMAN: We'll hold them down.

MR. DONELAN: We're in default with the union right now. Where do you think I'm going to get this cash?

I've not been paid. Let's be frank here. You know, what bothers me, Laddie, and I'll tell you flat out, is that you guys just keep thinking if you push you're going to get more out of me. It's not there. If it was there I'd have it.

MR. MONTAGUE: I'm not, Charlie. I recognize that. The point is --

MR. DONELAN: So let's appreciate the problem here and deal with it.

MR. MONTAGUE: The point is that if the notic process eats up 30 per cent of the settlement --

MR. DONELAN: I'm trying to do the best I can to get this thing done and do right by you guys, but there's a limit to what I can do.

THE COURT: All right. I mean you agree to pay $85,000 and they're going to assume the cost of the notice? Or are you going to pay $85,000 plus the cost of the notice? That's what you're going to bargain about. So get it bargained out.

What else? Next case.

You fellows here - just mourners sitting by?

MR. BATES: We just wanted to get it first hand, your Honor.

THE COURT: Well, I guess you got it.

MR. BATES: We're getting it.

THE COURT: That other problem you fellows had about depositions --

MR. McELHINNY: That's on for hearing on June 2nd.

MR. FREEMAN: We filed a couple of motions that are scheduled for hearing on June 2nd.

THE COURT: Okay.

(The remaining discussions in Chambers are filed under separate cover.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- x
:
IN RE: :
: M.D.L. #45
MASTER KEY ANTITRUST LITIGATION :
:
- x

I hereby certify that the within and foregoing is a true and accurate transcript of my original stenographic notes taken to record all proceedings in the above-entitled cause, in the United States District Court, for the District of Connecticut, at Hartford, Connecticut, on May 21, 1976, before Hon. M. Joseph Blumenfeld, U.S.D.J.

_____
Official Court Reporter

DATED: _____, 1976.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED
JUN 7 11 43 AM '76
U.S. DIST. COURT
CONN.

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
	ALL CASES

MOTION TO APPROVE FORM OF NOTICE
OF PROPOSED SETTLEMENT AGREEMENT
OF DEFENDANT ILCO CORPORATION

Defendant Ilco Corporation and liaison counsel for plaintiffs respectfully move the Court to approve the form of notice of the settlement agreement of defendant Ilco Corporation, which form is attached hereto as Exhibit "A".

MICROFILM
JUN 8 1976
HARTFORD

Motion granted.
June 7-1976
M. V. B
USDJ

ILCO CORPORATION

By Charles Donelan

Charles Donelan
Its Attorney
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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MICROFILM
JUN 11 1976
HARTFORD

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

All Cases

ORDER WITH RESPECT TO THE GIVING OF NOTICE OF PARTIAL SETTLEMENT (ILCO CORPORATION)

IT IS HEREBY ORDERED:

1. Notice of the Ilco Corporation settlement shall be given in the form approved by the court on June 7, 1976, which notice is attached hereto as Exhibit A.

2. Individual notice shall be given to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings. Liaison counsel for plaintiffs will prepare a list of recipients of this mailing and will see that the notices properly addressed are placed in the United States mail with the proper postage.

3. The mailing lists used for giving notice shall be filed with the Clerk of the Court and served upon liaison counsel for defendants.

4. The notices shall be mailed first class postage.

5. To supplement mailed notices, plaintiffs and Settling Defendant Ilco Corporation shall cause notice to be published on one date in all regional editions of the Wall Street Journal. Plaintiffs and Settling Defendant Ilco Corporation shall each pay for one-half of the cost of publication.

6. All notice required by this order shall be mailed or published no later than June 15, 1976.

7. Liaison counsel for plaintiffs shall be responsible for administering the mailing of the class notice. The plaintiffs will bear all expenses incurred in the printing, stuffing, handling, mailing, collection and tabulation of notices.

M. Joseph Blumenfeld
United States District Judge

Dated: June 11, 1976.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF FILING, together with the attached ORDER WITH RESPECT TO THE GIVING OF NOTICE OF PARTIAL SETTLEMENT (ILCO CORPORATION), was served upon all counsel of record by mailing a copy thereof this 11th day of June, 1976.

Charles Donelan

LAW OFFICES
MEYERS & KEYSER
SUITE 300-103 OFFICE COMPLEX
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TELEPHONE (412) 373-3520

JEROME M. MEYERS
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806 FRICK BUILDING
PITTSBURGH, PA. 15219
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May 13, 1976

Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P. O. Box 636
Hartford, Connecticut 06101

In re: Master Key Anti-Trust Litigation
M.D.L. Docket No. 45

Gentlemen:

Please be advised that I represent Oxford Development Company of Monroeville, Pennsylvania, who is a member of one of the plaintiff classes in the above entitled litigation.

This is to advise you that it is our desire and intent to appear at the hearing scheduled for June 2, 1976 and to present argument regarding the fairness and adequacy of the allocation of the proposed settlement funds.

Very truly yours,

Jerome M. Meyers

JMM:mm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
MASTER KEY ANTITRUST LITIGATION	:	M.D.L. DOCKET NO. 45
AMHERST LEASING CORPORATION, et al.	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 14, 234
EMHART CORPORATION, EATON CORPORATION SARGENT & COMPANY and ILCO CORPORATION,	:	
Defendants.	:	

AFFIDAVIT OF MAILING OF LEGAL NOTICE
RE: PROPOSED ILCO SETTLEMENT TO MOTEL,
HOTEL, OFFICE BUILDING AND APARTMENT
BUILDING CLASS

COMMONWEALTH OF PENNSYLVANIA :
SS
COUNTY OF PHILADELPHIA :

H. LADDIE MONTAGUE, JR., being first duly sworn according to law, deposes and says:

1. I am a member of David Berger, P.A., Attorneys at Law, 1622 Locust Street, counsel for class representative plaintiffs in the matter entitled Amherst Leasing Corporation v. Emhart Corp., Civ. No. 14,234 (D.Conn.) and Co-Liaison Counsel.

2. On June 15, 1976, I caused to be mailed a copy of the Notice attached hereto as Exhibit "A" relating to the proposed Ilco Settlement and the hearing for approval on June 28, 1976, to the following:

(a) To eighty-six (86) counsel who have filed appearances on behalf of class members in the private class (as listed on Exhibit "B" hereto); and

(b) To ninety-four (94) class members and or counsel who have filed requests to be kept informed as to the status of these proceedings (as listed on Exhibit "C" hereto).

H. L. Montague

H. LADDIE MONTAGUE, JR.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 24th DAY
OF JUNE, 1976.

Fredalee Shenk

NOTARY PUBLIC

FREDALEE SHENK
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 11, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:	
MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45

NOTICE OF PARTIAL SETTLEMENT

You have previously been notified by Notice of March 29, 1976, of these class actions.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby further notified of a proposed settlement agreement between plaintiffs and defendant Ilco Corporation, which settlement will be presented to the Court for approval on June 28, 1976.

Partial Settlement with Ilco Corporation

Ilco Corporation, a defendant in this litigation, has sales which represent approximately five per cent (5%) of the total sales of contract hardware by all four defendants.

Ilco Corporation has agreed to pay the aggregate amount of Eighty-Five Thousand Dollars ($85,000) in final settlement of all claims against it in this litigation, including the claims of plaintiffs, intervenors and class members.

The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in Twelve (12) monthly installments of Five Thousand Dollars each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from

EXHIBIT A

its parent company, Unican Security Systems, Ltd., a Canadian corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor, and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for 2:00 p.m. , June 28 , 1976 to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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C-3-G23-053-

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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IN RE:
: M.D.L. #45
MASTER KEY ANTITRUST LITIGATION
:
- x

JUNE 2, 1976
HARTFORD, CONNECTICUT

B E F O R E:

HON. M. JOSEPH BLUMENFELD, U.S.D.J.

FAIRNESS HEARING ON
PROPOSED SETTLEMENT

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THE COURT: This is in re: Master Key Anti-trust Litigation.

There is a matter of the approval of the hearing, at least, on the fairness of the proposed settlement of Emhart Corporation's claim. Now, who wants to be heard?

Are you speaking in support of the proposed settlement?

MR. FREEMAN: Yes, your Honor.

I would like to speak very shortly in support.

THE COURT: That's a good start.

MR. FREEMAN: As your Honor is aware, we have sent out class action notices pursuant to your Honor's order. We have filed affidavits regarding those mailings, and we have subsequently filed a report with respect to the number of people who have requested exclusion in each of the class actions.

We have also reviewed the inquiries and objections to the settlement. There were three or four objections filed, and one set of attorneys in Washington filed a memorandum in support of objections to the settlement. That is the only memorandum or paper objecting to the settlement that we have seen or reviewed.

THE COURT: Whose is that?

MR. FREEMAN: That's filed by an attorney in Washington, Samuel Seymour.

THE COURT: Yes, right.

MR. FREEMAN: The plaintiffs, through liaison counsel, have filed a memorandum in support of the settlement with Emhart Corporation, setting forth the efforts that we have made in this litigation for the last five years - the basis of the settlement and the basis of the allocation between the public and private classes.

In view of the objections that have been filed by Mr. Seymour on behalf of private builders, we have also filed two affidavits. First, an affidavit of Carol K. Gibbs, which sets forth the basis on which she computed the 80 per cent/20 per cent figures that are attached as Exhibit A to the memorandum in support of this settlement, and the underlying figures or records from Emhart Corporation that she used to make this computation.

THE COURT: That's based just on Emhart's records?

MR. FREEMAN: Yes, that was based on Emhart's records from 1964 to 1968.

For purposes of the affidavit she extended her computation through 1970, which was as far as

Emhart maintained records by Dodge Project Classification. And we have set forth in the affidavit the breakdown for 1969 and 1970.

As set forth in Exhibit A to the memorandum in support of settlement, the allocation between public and private varies from 15 per cent for private to 20 per cent for private, over the four year period.

In addition, we have filed the affidavit of Lee Freeman, Jr., which sets forth the results of a computerized study that was made by an accountant from Price, Waterhouse who has been retained as an expert witness by the non-settling defendants. Mr. Dykeman of Price, Waterhouse did a study of 3,500 jobs which were collected from the files of more than ninety distributors throughout the country and, according to his analysis, the percentage breakdown between public and private was 83.2 for public and 16.8 for private - which again we file in support of the 80/20 per cent allocation.

I would like to make one correction for the record. In our memorandum we have transposed the figures for Russwin and Corbin on Page 10 of the memorandum. The larger figure should be for Russwin, the smaller figures for Corbin.

In addition, I'm informed by counsel for Emhart Corporation that the Russwin figures, the larger Russwin figures, include a certain amount of export sales. So they should be reduced somewhat. This would simply increase the percentage figure that the settlement represents, percentage of total sales. The percentage would be slightly more than 8 per cent, rather than 8 per cent if you use simply domestic figures.

In addition, in the footnote at the bottom of Page 12, subsequent to writing this memo we received more accurate figures from the Department of Health, Education and Welfare and from the Digest of Education Statistics, the 1975 edition, the breakdown between public enrollment and private enrollment is 88 per cent. We show it as 90 per cent for elementary and secondary, and 77 per cent for institutions of higher learning.

The chart for 1973 in the Digest for total enrollment is 88 per cent.

THE COURT: That's pretty peripheral, isn't it?

MR. FREEMAN: Well, I think the thing that this points up is that the private class does not include all private construction. Of course, it does not include private construction that did not

employ master key systems, such as track housing, town houses and other residential construction. But also the definition of the private class does not include a number of buildings that may have had master key systems, such as private schools, garages, warehouses and other such buildings.

In addition, Emhart Corporation has filed a memorandum in support of settlement which we subscribe to, as well.

We would like to respond to any questions that may be raised by objectors who are coming in.

THE COURT: You talked about the 80/20 allocation between private and public. But what about the 8 per cent as to the sort of premium on sales, or the damage factor?

MR. FREEMAN: Well, as set forth in our memorandum, your Honor, we approached the settlement in terms of Emhart Corporation's sales. We took Emhart Corporation's total sales of contract hardware and we took a four year period for those sales based on the grounds that in order to extend that four year period the plaintiffs would have to prove fraudulent concealment. And in the context of settlement negotiations a four year period was appropriate.

THE COURT: Well, the four year period is one thing.

I talked about the factor of 8 per cent that you applied to the sales for that period.

MR. FREEMAN: We took examples, first of white sales, so-called white sales; we took examples of price concessions on protected work versus non-protected work; we took examples of markups by dealers on protected work versus non-protected work. And we had a range of overcharges for settlement discussions of -- I believe as set forth in the memo the range is from 10 to 20 per cent overcharges, for purposes of settlement discussions. The range of overcharges may have been higher on extensions than on original jobs, but for purposes of the settlement discussions we included all purchases of contract hardware within the scope of the settlement. That is, anyone who has purchased a contract hardware for a new job or for an extension of a master key system is eligible to participate in the settlement.

At the end of the trial and at a time when we can determine more precisely what our damage proof shows, there may be a weighted factor for extensions. It may be that the overcharge on extensions is

greater, much greater than the overcharge on original jobs. But for purposes of this settlement we did not differentiate in terms of eligibility to participate in the settlement.

And given the potential range of overcharges that we thought we could prove, the $7.5 million offered by Emhart Corporation was deemed a reasonable and adequate amount. This amount was paid more than a year -- well, almost a year ago. It has earned interest in the amount of a half a million dollars to this point. So the settlement fund approaches $8 million.

The fact that Emhart Corporation was the first defendant to bring up the matter of settlement and cracking the ice was a factor the plaintiffs considered in the amount that we were willing to take in settlement to move the case along.

The settlement was, in effect, a $6 million settlement for the public class and a $1.5 million settlement for the private class. The settlement was accepted by the fourteen or fifteen states who have filed suit on the basis of the $6 million being paid to the public entities. And at the insistence of Emhart's counsel, at the proper insistence of Emhart's counsel, the settlement agreement had to

be approved and accepted by all counsel who are participating in the litigation.

THE COURT: All right.

Some question has been raised about the fact that the period for which damages were computed or the settlement was based terminated in 1969. Is that when the conspiracy terminated?

MR. FREEMAN: Yes, your Honor.

For purposes of negotiation we picked the year in which the federal government filed suit. In 1970 the three defendants - Sargent, Emhart and Ilco - entered into consent decrees with the federal government, and pursuant to those consent decrees mailed out notices to all of their dealers, which the government insisted upon, saying that there were no restrictions on the sale of contract hardware.

To prove that the damages extend beyond 1969 or 1970, we will have to show additional incidents and we will have to show residual effect of the conspiracy on prices. For purposes of settlement we deemed that the cutoff date should be 1969.

There's a same problem going back in terms of eligibility to participate in the settlement. And because this is a partial settlement, because the

money is in the bank earning interest for the plaintiffs, we deemed that the plaintiffs would not be prejudiced by awaiting the outcome of the trial against the non-settling defendants to determine precisely how much each person would be eligible to receive. Following proof at trial we can determine what kind of weighted percentages to give, extensions versus new jobs, prior to 1964 versus subsequent to 1964, if there has to be a differentiation made. If the plaintiffs fail to prove fraudulent concealment, in other words.

THE COURT: All right.

Now, I think the objections submitted in writing are largely, if not entirely, directed against the allocation 80/20.

Is there any reason why that 80/20 has to be an inviolate established percentage or proportion made at the present time?

MR. FREEMAN: Yes, that's the only basis on which the public classes accepted this settlement.

This settlement was offered to the states and the public class as a $6 million settlement. And when the State of California, or the State of New York, or the State of Illinois analyzed the amount that it stood to receive from this settlement,

computations were made on the basis of population and capital expenditures, and each state got a rough idea of what it would receive. And it was only on that basis that the Attorneys General of the various states accepted this settlement.

I might point out, your Honor, that this case originally included one national private class action and another private class action by Sturdy Home Builders - both of which were dismissed as soon as those private builders were required to respond to discovery. Rather than submit to depositions or answer interrogatories, those private builders dismissed their cases.

It's the public agencies that have carried this litigation for six years. And there was a strong sentiment among the public agencies that the private class should get nothing, due to the fact that the private class has a pass-on problem. They build for profit, they simply resell their buildings, or their hotels and motels, rent the rooms out to people; and the fact that the extensions, where the major overcharge may have occurred, are concentrated in the public sector. The evidence shows that there are very few, if any, extensions in the private sector.

In order to resolve the matter by some reliabl statistical evidence, rather than simply hard bargaining as has occurred in many other cases, we felt that the fairest and most appropriate way to allocate the settlement would be to take Emhart's sales figures, because it was a unique opportunity to get precise figures with respect to sales to different categories of end users. Those type of statistics were not available in other cases, such as the plumbing case or the gypsum case in terms of breaking down the sales. And rather than litigate how much one class should get rather than another, we went to the most reliable statistics we could find.

But I would like to emphasize that that $6 million was the settlement which the public plaintiffs accepted. And I think you can view the settlement in terms of two separate cases. $6 million was being paid to settle the public class actions and $1.5 million being paid to settle the private class actions.

And I think Emhart clearly understood that and Emhart, in fact, in its memorandum, supports that allocation.

Thank you, your Honor.

THE COURT: All right.

MR. FREEMAN: I'm sorry, your Honor. I didn't want to leave the impression that there was no private case that went forward. Mr. Montague, as class representative of his private class --

THE COURT: You didn't leave that impression.

MR. FREEMAN: -- has prosecuted that case.

It's only Bermar and Sturdy Homes that has dropped out of the litigation.

THE COURT: It would be very interesting to see where Mr. Montague stands, now that he is representing both private and public. That question has been raised here by somebody.

MR. FREEMAN: I think that's why, your Honor, the reference to statistics is so important. The fact that the statistics do break down almost precisely at 80/20, no matter whether you use Mr. Dykeman's study or Emhart's sales figures - Mr. Dykeman's study being a study of distributors throughout the country.

I think the important thing is in this case that those statistics are available, and unlike other cases it was not merely bargaining among plaintiffs' counsel. The settlement was presented to people on the basis of the statistics.

THE COURT: There is some support, certainly, statistical support, in what you might call neutral data, as well as Emhart's data, for the 80/20; right?

MR. FREEMAN: Yes.

Given the track record -- well, yes, it's contemporaneous analyses by the Sales Department of Emhart during the period that the sales were made. These are analyses made in '66, '67, '68. They were not made for purposes of the litigation.

THE COURT: Well, that reflects distribution of Emhart's sales and Dykeman's study represents distribution on a much broader basis?

MR. FREEMAN: Yes, your Honor.

THE COURT: Right?

MR. FREEMAN: Yes.

But I think the Dykeman study reenforces the allocation that we've made. But I think for purposes of the settlement I don't think it's necessary to look beyond Emhart's sales, because Emhart is settling for Emhart. Emhart is not settling for anyone else. And I do not think it would be appropriate to make Emhart pay for anybody other than itself.

THE COURT: At this stage.

MR. FREEMAN: At this stage.

Thank you, your Honor.

THE COURT: All right.

MR. MONTAGUE: Your Honor, my remarks are basically in response to the questions raised by objectors, and it may be more appropriate for me to await for the objectors to speak and then I won't have to repeat or second guess what they're going to say - if that would be all right with the Court.

THE COURT: Okay.

Are you rising to object?

MR. DIXON: I would like to make some observations in support of the settlement --

THE COURT: All right.

MR. DIXON: -- that, I guess, I was principally responsible for.

THE COURT: You submitted a very fine brief in support of it.

MR. DIXON: We have supported a memorandum and it sets forth pretty much everything that I'm in a position to state to your Honor this morning.

I think if I've learned anything over a number of years it's (1) that you never know what's going to happen in a trial.

THE COURT: Where did you learn that?

MR. DIXON: I learned that in this courtroom particularly, as recently as ten days ago.

And the desirability of a settlement reached by involved counsel based upon a thorough knowledge of the law and the facts in the case. And I would just like to point out, if I may at this point, we have a complex case. We do not know what the outcome of a trial of that case will be.

You do not decide the issues of liability today in determining whether or not this is a fair settlement. The question is whether it is reasonable within a range which recognizes the uncertainties of law, as the case now stands, and the concomitant risks and the costs necessarily inherent in taking this bifurcated trial to a conclusion, including appeals.

Now, the settlement figure which was arrived at is, I will tell the Court quite frankly, the top figure that I am willing to recommend to a client in settlement of the case at this point. It comes at a point, if your Honor please, when we had had five years of discovery - discovery the extent of which I think is probably unparalleled within this very District.

There are certain risks that the plaintiffs

have in a trial of this case. First of all, they find it incumbent in this case to prove that there was a horizontal conspiracy. This is an issue which was not raised by the government in any of its civil suits against the individual defendants. And if the plaintiffs fail on that particular issue, they will recover nothing.

There are problems on the proof of damages. Emhart, from the point of view of its profits, its fixed costs, the rates of return in other similar industries, the sale of hardware by non-defendant manufacturers at similar prices, no substantially reduced prices following the institution of the government and the private suits, Emhart's prices - all these provide a defense to Emhart which might, in the eyes of the jury, mean that no damages would be recoverable, or perhaps a small amount of damages.

The legal questions, which have been raised before your Honor in motions, will make, in my opinion, for a protracted trial. As a matter of fact, there will be two of them: one on liability, one on damages. Appeals are inevitable. And it seems to me that the delay in a final court determination of the amount of damages highlights the importance to the plaintiffs of the fact that they now

have available to them approximately $8 million.

When Lee Freeman and I reached this settlement about a year ago, we each believed, based upon our experience in the trial of cases, that the figure of seven and a half million dollars as of a year ago is not only fair to all the plaintiffs, but it's also fair to the defendant Emhart. And that is a consideration I think this Court will find, on the basis of cases cited in our brief, is a substantial factor in coming to the conclusion that it is a fair settlement.

Now, it should also be noted that the overwhelming majority of the class members apparently approve the settlement. There have been only approximately 700 opt outs that have appeared as a result of the mailing out of approximately 40,000 notices; and we, of course, should include the countless number of people who received notice by publication in the Wall Street Journal and otherwise. They apparently realize that they will receive a substantial recovery from the settlement figure, even if the liability trial is lost.

Now, a final point. Eaton and Sargent participated with competent counsel in this case from the very start. The very fact that they would be joint

and severally liable in the event that a conspiracy is proven, the very fact that they have chosen to make no offer of a settlement whatsoever up to the present time and are apparently determined upon a trial of the case, is a final argument which I think buttresses the reasonableness to the plaintiffs of this figure of $7\frac{1}{2}$ million.

Thank you, your Honor.

THE COURT: Thank you, sir.

MR. SEYMOUR: May it please the Court.

THE COURT: Who are you?

MR. SEYMOUR: I'm Samuel H. Seymour of Washington, D.C.

THE COURT: All right.

MR. SEYMOUR: I have entered an appearance on behalf of 220 members of the private owner-builder class. My co-counsel, former Senator Tydings, has also entered an appearance on behalf of these clients.

We have followed the progress of these proceedings with particular interest, not only because of our representation of a very substantial segment of this class, but because we are counsel for the same class in the gypsum antitrust litigation before Judge Zirpoli in San Francisco, where we have just concluded the settlement administration; and in the

plywood antitrust litigation before Judge Cassibry in New Orleans, where we have just got nationwide classes certified.

We are aware of the fact that this proceeding has been handled in a model fashion - not only because of your Honor's handling of the case, but because of the competence of plaintiffs' liaison counsel, who are well known to us in other litigation as well.

We are not here today to try to upset the apple cart by a late appearance. We have certain broad areas of agreement with the proponents of this settlement.

One thing we agree with them about is that non-settling defendants who have elected to go to trial have no standing, as a matter of law, to challenge a settlement arrived at in a good faith manner between class representatives and a defendant whose counsel sees things the way Emhart's counsel has explained his position.

Moreover, we would support the fairness and adequacy of the $7½ million-plus interest amount, if it were not for the clause in the settlement agreement restricting only 20 per cent of that amount to the private owner-builder class.

THE COURT: Those are separate elements. The amount of the settlement is satisfactory, considering the nature of the claim and all of the elements that would be considered in determining whether it is fair.

MR. SEYMOUR: Yes, your Honor.

THE COURT: And you challenge the allocation?

MR. SEYMOUR: That's right.

THE COURT: All right.

MR. SEYMOUR: And I've been in the position of negotiating class settlements. We got $67½ million in gypsum, and a lot of people criticized that as too low; and we know the risks that were attendant upon a trial on the issue of liability and damages, and we well appreciate the skill with which that settlement was negotiated.

Now, I feel that the allocation formula, however, makes the settlement inadequate and unfair to the private owner-builder class. I feel, moreover, that the injection of this element of allocation and the elements that are down the road and will be before this Court at a later date on the plan of distribution within the classes place counsel for the owner-builder class in an awkward position, a position that is difficult for someone

even of Mr. Montague's demonstrated abilities to handle.

Because we have a situation where he's representing the national governmental class and the private owner-builder class in areas where those classes are or should be in a strong adversary position - at least as a prima facie matter.

And there is at the present time, so far as I know, no independent spokesman for this class on matters of allocation and distribution.

THE COURT: While you are on your feet, aren't you speaking to that?

MR. SEYMOUR: That's exactly what I'm doing.

THE COURT: Right.

MR. SEYMOUR: And I think that that leads into the point about the overwhelming support for the settlement and the fact that it's mentioned in one of the briefs that some of the Johnny-come-latelys have raised some issues, but they don't know the record.

I think if you analyze the posture of this case you will see the importance of giving very careful consideration to the views of outside counsel. And I'm not the only one who is going to speak to this issue today.

In the first place, all but one lawyer in this litigation represents governmental entities, and it certainly should come as no surprise to anyone that they would be overwhelmingly in favor of taking 80 per cent of the settlement proceeds.

In fact, I have facetiously said to Lee Freeman, Sr. that I consider the master key litigation "Freeman's Revenge" because in the gypsum cases he got 10 per cent for the governmental classes on the basis of a negotiated inner class settlement, and he laughed and conceded that he had done better in this case. And of course he has. It's a brilliant thing if you can get 80 per cent of the settlement in the context of this litigation.

THE COURT: Well, I don't see any validity to a comparison of that kind. I don't know what the situation was in the asbestos cases.

We have some support for the 80/20 allocation here; statistical support. Do you question the validity or accuracy of what has been produced to support a 80/20?

MR. SEYMOUR: I do, to some extent.

THE COURT: What have you got?

MR. SEYMOUR: Well, I feel, in the first place, that addressing myself to the statistics that have

been produced, I think they are beside the point. My basic argument, your Honor, is that there is no reason to have an allocation in a case where both classes are at the same level of the chain of distribution and purchase in substantially the same fashion.

That the simple and easy and fair way to divide these settlement funds up are to let each claimant recover in accordance with the relationship his claim bears to the total claims asserted.

THE COURT: It's easy enough to say that, but where would you be now if we actually just put all this money, kept it in escrow, and then went ahead and made everybody prove their case and you came out with the private owners getting about 6½ per cent? Which may well be.

I mean you just object to receiving 20 per cent because it isn't enough. I don't see anything to really undermine or seriously cast doubt upon the supporting data which has been furnished to the Court for this allocation.

MR. SEYMOUR: Well, the supporting data which has been furnished to the Court is essentially the Emhart sales statistics.

THE COURT: Essentially. There we have hard

data from the fellow who's making the payment.

MR. SEYMOUR: Right.

Now, those statistics, I think it must be conceded, tell us nothing about the distribution of sales of the industry as a whole, or of the co-conspiratorial group. And we are dealing with a defendant who is jointly and severally liable for all of the damages on all of the sales in this industry that were affected by the conspiracy. And when we settle Emhart, it seems to me, we should take a look at the overall distribution of sales between the public and private sector, if we're going to have any kind of an allocation, because we are settling its share of the total liability; not its liability as in a single tort case for its own sales.

And that's all the more important in a case where there are only three solvent defendants and where only one of them is willing to settle. This settlement and the allocation formula may well wind up to be the only recovery the private owner-builder class has in this case, because we have to recognize the possibility of a victory at the trial by the non-settling defendants.

THE COURT: All right.

So I don't see how that supports your argument

MR. SEYMOUR: And I say to your Honor that in that kind of context it is particularly important that we look not at Emhart's sales, but that its potential liability for the global sales that are involved in the case.

THE COURT: How can you say that, and at the same time say you may wind up with nothing from the other defendants?

If you've only got Emhart that you can stick, then they're going to be liable for the sales they made. They're not going to be liable from the sales somebody else made.

MR. SEYMOUR: Emhart, however --

Well, let me go on and try to develop this.

THE COURT: All right.

MR. SEYMOUR: I think that I've gotten out of context.

What I feel strongly is that in this case, as in others, the settling defendant's settlement adequacy should be judged in terms of the percentag of sales of the industry and their relative positio in it, and not on some flat percentage of their sales and the way that those sales happen to be allocated in the market place, if you accept the

analysis of those sales as true.

THE COURT: Well, wait a minute, before you go on.

There was a study by Dykeman, wasn't there, that was submitted here?

MR. SEYMOUR: Yes.

THE COURT: Doesn't that fall within this 80/20 range?

MR. SEYMOUR: The study by Dykeman was submitted about ten minutes ago.

When we prepared our notice of appearance, well before the May 13th deadline, we asked class counsel specifically in a letter for all studies, survey, reports or other materials that would support this allocation. Because at that point we were trying to find out why we should agree with it.

THE COURT: Sure.

MR. SEYMOUR: We never heard of the existence of a study or support, until a footnote in class counsel's brief supporting the settlement referred to it. Then we got a more lengthy reference in the Emhart brief rebutting our objections.

Until this morning I never heard that the entire study had been put together. There was the covering affidavit and it was submitted in evidence - I have

not seen it. And I think that presents a problem.

I think we're entitled to see the support for the settlement before we're in the middle of the hearing. And we ought to have a chance to address ourselves to it and perhaps file comments about it. And we asked for this nearly three weeks ago. It could have been produced then, if it was available at the time and was going to be cited in the preparation of their briefs.

Now, I'm not trying to fault plaintiffs' counsel because I know they've got a lot of things to do in handling this case. But the point is that study came in this morning. I have not seen it. None of the other objecting counsel who will be heard this morning have seen it. And I feel I would like to have an opportunity to see it and to comment upon it before the Court rules on this matter.

THE COURT: All right.

Let's just pass that, then. What do you have specifically to support your position that 20 isn't enough?

MR. SEYMOUR: Well, what I have specifically -

THE COURT: That you can't fault counsel for the other side, or the public parties with. If you've got something.

I saw what you have submitted. It doesn't seem to me that it's really --

MR. SEYMOUR: When we got no survey supporting this settlement and when we found out that it was solely based on Emhart's statistics for a four year period, with which we have some questions that I'd like to come back to in a moment, we rather quickly - because we're operating under a tight deadline - got together what Census Bureau statistics and statistics for the New York area we could. We got the New York area statistics, together with the help of Mr. Louis Whiteman who is Managing Director of the Owners and Builders Division of the Real Estate Board of New York, who provided us with the New York data.

I have since had an affidavit prepared so that at least the sources and the method of calculation of that data and the exact way we went about putting together our statistics would be in the record, and I would like to submit that along with the other new filings that have been submitted today. I would like to have leave to file the affidavit.

THE COURT: It may be received. Yes, you can file it.

MR. SEYMOUR: This is the original.

THE COURT: As I recall it, that data is just

figures as to public and private buildings, right?

MR. SEYMOUR: Well, it's more discrete than that.

THE COURT: Does it have any reference to key lock systems?

MR. SEYMOUR: No, it does not.

But it's more discrete than just public and private buildings. We selected out of the broad category of statistics available the statistics relating to the categories of buildings involved in this case as contained in the class definition, and we further got from the Census Bureau underlying computer runs which helped us to break down the broad categories of data provided by them.

Now, in response to the comment about these not being data about the sales of master key systems, I would respond by saying, as has just been stated by Mr. Freeman, that the governmental entities, in thinking about the value of this settlement to them and probably the way they're going to distribute the proceeds amongst themselves, have taken into account statistics on the volume of expenditures for construction. And these are precisely the type of figures that we are urging on the Court now.

I submit to you that if they are valid enough

to apportion the settlement within the governmental classes, they are certainly valid enough to make some kind of a judgment on the overall reasonableness of the settlement.

I do not maintain that our statistics are conclusive. I say to your Honor --

THE COURT: Suppose they do divide it that way among themselves. If they use all those figures, I mean they still might come out more than 80/20; they might come out at a better relationship.

MR. SEYMOUR: I think that's a question of how the settlement proceeds should be distributed and I think that it's going to be reached under the program presented to your Honor by class counsel at a later stage of the litigation.

And I submit that every issue, once you get past the overall amount of the settlement, every issue of allocation and every issue of distribution is an issue on which the owner-builder class and the public entities classes should have a healthy difference of opinion. And there is a problem in this case because we have no independent representation for this class.

I would say to your Honor that I think that one thing that must be done in this case, I would urge

that it be done on the issue of allocation, but if not on the issue of allocation on the issue of distribution - that the Court do what Judge Zirpoli did in connection with claims administration in the gypsum case.

THE COURT: Easy enough.

MR. SEYMOUR: Appoint a committee of counsel that includes independent lawyers who can be heard on a formal basis in this litigation on those questions.

THE COURT: But I heard counsel say that the settlement was contingent upon its being accepted and that counsel for the public plaintiffs said that if they get 80 per cent it will be settled, otherwise not.

MR. SEYMOUR: With all due respect, your Honor, I submit that that argument proves too much. Because what --

THE COURT: I'm not talking about what it proves; I'm talking about where it leaves us.

I mean if there's no dispute, if you're all willing to wait and have the allocation made on the basis either of claims or on the basis of actual determination of damages, I don't know how long that's going to take. According to the defendants

here, we may be here till the end of the century.

MR. SEYMOUR: I don't think, your Honor, that that's the alternative we are faced with.

THE COURT: What is it, then? How else can we handle it?

MR. SEYMOUR: I think, first of all, that no lawyer can be in the position of telling a Federal Court administering a settlement under Rule 23(e) that unless you approve it just the way we've put it to you, we're not going to accept it and we're going to go back into a procedural morass.

At some point a judgment has to be made, independent of what some lawyer says he's going to do if there's an adjustment made in one aspect of a settlement. And I say to you that in case after case after case where settlements have been arrived at, everybody has stated an inflexible position with regard to them. But when somebody came forward with a legitimate objection to one aspect of it, that the Court felt was legitimate, counsel have found a way to accommodate that problem and to keep the settlement afloat and get it administered.

We did it in gypsum when Mr. Montague came in and said that the settlement couldn't be approved until we determined for what years claims would be

eligible to participate in the settlement. And he won that argument. The settlements weren't broken over that aspect.

He made a good point, and Judge Zirpoli accepted it.

And I think I'm making a good point, with all due respect, here.

THE COURT: Well, you may have a place to start making a good point. And the point theoretically is pretty good. But there is support here for the allocation that has been proposed and it's not unreasonable, it's not just wholly imaginative.

MR. SEYMOUR: Let me address myself to that support, because I've been getting off from the first question which your Honor asked me, which was what problems do I have with the Emhart statistics as a basis for this settlement, and also the Price, Waterhouse study.

THE COURT: Well, we're just getting the allocation now.

MR. SEYMOUR: As they go to allocation.

THE COURT: Right.

MR. SEYMOUR: In the first place, I have stated and will not repeat, that I don't think that those statistics have controlling importance where we are

settling the liability of a jointly and severally liable defendant.

Secondly, I am puzzled by the lack of an explanation, and maybe one will be forthcoming, of the fact that there is a discrepancy of $24.3 million.

THE COURT: Well, now, wait a minute. Let me take one first.

What difference does it make whether it's joint and several? If you're going to have to split up or put $7½ million into, we'll say, a judgment of $35 million, the proportion of that 7½ that's going to the private and public is going to be the same. It isn't going to be affected by whether it's joint and several, or not.

MR. SEYMOUR: And I think that if it got to that it wouldn't go 80/20 either.

THE COURT: Well, that's another thing.

But the fact that it's joint and several wouldn't make any difference and the proportion would be the same, no matter how much the verdict is. At least it seems to me. I may miss something, though.

MR. SEYMOUR: I think the fact is you can elect to enforce your judgment against any one of the defendants.

THE COURT: That's true. But I don't think anyone can say I'll take all mine from Emhart. I think it still would have to be apportioned among all claimants.

MR. SEYMOUR: Of course.

THE COURT: Well, the apportionment would be the same, no matter how much is in there.

MR. SEYMOUR: Now, I think there is a problem in the statistics because there's a difference of $24.3 million for the four year period 1965 through 1968, from Emhart's total sales of these products to the relevant categories of users as reported in the proponents' brief and between the portion of those sales which was used to make the 80/20 split.

For example, we have $22.2 million in 1965 sales of Emhart which are listed in an effort to justify the 8 per cent adequacy of the settlement, but only $16.3 million in those sales - a difference of 5.9 per cent - are included in arriving at the 80/20 split.

Now, there may be nothing sinister in that. But my point is on this record so far there's no explanation. What if those sales are sales which are appropriately allocable to the private owner-builder class? I've raised that question. I think

it is appropriate for it to be answered. And, you know, I'm trying to get information more than I am to find fault with the settlement.

It is conceded that some private sales were included in public categories. It is not clear whether federal sales were excluded. If they were, perhaps the affidavit that was filed this morning and that I have not seen clarifies that point.

And where do condominium and cooperative apartments stand? To me this is one of the most mystifying aspects of this case.

A condominium, a cooperative and a rental apartment are simply three different ways of having an apartment. And I lived and owned a condominium apartment in Southeast Washington, and we had the most elaborate master key system you ever saw.

Many of our clients are condominium builders who use master key systems and responded to this notice because they felt that they were apartment builders. What is the justification for the exclusion of sales to condominium and cooperative apartments which are an ever increasing part of the high-rise residential market? Those are some of the types of detailed problems I have with the Emhart statistics.

The Price, Waterhouse study, at the stage in which it was last night when I had only the briefs before me, was admittedly incomplete. What's been done, what has been added in the affidavit filed this morning, I don't know. And I want an opportunity to study it. But it deals significantly, your Honor, with jobs - not dollars. It allocates the jobs between different categories. One job equals one unit basis.

Now, all jobs are not equal in their dollar value and there's no evidence in the record that show that the value of jobs tends to even out over any kind of a selected sample, much less the relatively random sample taken here. I submit that a dollar breakdown is more relevant than a breakdown based on jobs.

Now, there are some things that weren't counted. Why weren't they counted? If you will look at the Dykeman study, at least the page of it appended to the Emhart brief, they counted the category Public - Other which added 2.91 per cent to the government total. But they didn't put down Private - Other, which is 18.8 per cent. And they didn't include Unknown, which is 11.03 per cent.

Now, it's very clear from the very many public

categories that you have in that study that the public sector is covered virtually entirely by specific categories. And those Unknown and those Private - Other categories are, in all probability, private owner-builder construction. But they were simply left out. There wasn't even an attempt to make some kind of an allocation. And together they account for 29.83 per cent of the sales shown in the Dykeman report. I submit to you it is very questionable.

The report doesn't say anything, unless this has been supplied this morning, about the time period covered, about the basic assumptions and about the methodology. Maybe that's in the record now, but it wasn't in the record in time for any of the objectors to assess its validity.

It was not given to us when we asked for it. I think that in truth and in fact it cannot be said that there was a proper evidentiary record at the commencement of this hearing on which members of the class could come in and avail themselves of their right under Rule 23 to evaluate the settlement and be heard on any problems they have.

THE COURT: All right.

MR. SEYMOUR: It isn't enough, in my view, to

allude to the enormous record in this case because

THE COURT: All right. That's enough.

MR. SEYMOUR: Pardon?

THE COURT: I mean you're just getting a little redundant now.

That's your whole point, isn't it?

MR. SEYMOUR: All right.

Now, I think that we are dealing here with two classes, which in terms of the notice which was given are relatively equal size.

The briefs say that 20,000 notices were sent to public entities and 17,700 were sent to private entities. And I think that there's a real question as to an 80/20 split between entities who are at the same level of the chain of distribution and are roughly equal in their numbers. There could be tremendous distortions caused by a hasty compartmentalization of these settlement funds into any kind of a category at this point, without looking at all available statistics.

We could get a situation where an enormous number of builder-owners claims -- we had 35,000 claims in the gypsum cases against a sum of 1.6 million before attorneys' fees and expenses are deducted, and the recovery could be absolutely de min

Yet the evidence here may show that the owner-builders were damaged as substantially as the governmental entities in this case.

We could have a situation where the reverse type of distortion occurs. It is simply a very, very arbitrary and risky thing to divide a fund up, and it should only be done on the basis of all the data and the best data available, and not merely the data which happens to be in the record and tendered by the proponents of this settlement.

In the gypsum cases we did have, and I'm sure it will be pointed out, settlement funds allocated to each class on a percentage basis. But that was done because the classes were vertically structured and we had problems of pass and remoteness and it was necessary to allocate portions of the fund to each class based upon the distribution channels in the industry. But that isn't the case here where we're dealing with the fourth tier in the chain of distribution.

I think that there are several other things, aspects in which the record here is not complete. We have a long and impressive description of the discovery which has taken place in this case. Yet there is no evidence of industry sales and how they

break down between public and private buyers.

From the files of the other defendants I find it hard to believe that we don't have more statistics available to us in this very record than the Emhart sales statistics.

THE COURT: Well, yes, you put your finger on a sore point. Some of that data we don't have from some of the defendants. There's a motion today to compel disclosure of that kind of evidence which has not yet been furnished.

MR. SEYMOUR: I see.

I also point out that much is made in both supporting briefs of the - and I quote the word - "evidence" that the overcharge was greater on master key extensions than it was on original installations. And then the extrapolation that there are more extensions in the public sector than in the private sector.

But I'm mystified at how to deal with an assertion like that when that evidence isn't put in the record in some kind of manageable form. We don't have any affidavit introducing some exhibits which show it or which introduce deposition excerpts which refer to that that we can assess and see whether that's true or not. There's just, at this

point, an ipse dixit that the evidence shows this and that it somehow supports the split. And I don't think that's a proper kind of record.

THE COURT: I don't think that was used to support the split. That was used --

MR. SEYMOUR: No. It was. It was used to --

THE COURT: Well, if it was a sale it would support the split because you're dealing only with sales. It wouldn't make any difference whether it was sold as an extension or sold originally, if it was sold within the period.

MR. SEYMOUR: I agree with that.

But the proponents of the settlement say that one justification of the 80/20 split is the fact that there is evidence in the record that the overcharge was greater on extensions than it was on original sales and that the public entities bought more extensions and the private entities bought the other.

THE COURT: Well, if that's so, that's an argument that could be made, that they got overcharged a whole lot more; because of the extensions the overcharges were a whole lot more and they had all the extensions.

MR. SEYMOUR: Of course, it's an argument that

could be made. But my point is it has been made.

But this is an evidentiary hearing on the settlement and that evidence has been alluded to, but not in any way put in the record so that those who are affected by the settlement can satisfy themselves with respect to it.

THE COURT: The only way they used it, really, was to try to explain why they settled on 8 per cent. At least I so understood.

Well, let me interrupt here at this point. If we are going to get into a situation where we are going to have to have evidentiary hearings in order to support this allocation, spending a lot more time in arguing for the record isn't going to help us. So what I would suggest is a short recess.

Now, you have received data, you say, only today. Now, you know Mr. Freeman, you know these other fellows. Maybe it would be a good chance to sit down and spend half an hour talking with them to see what can be done, if possible, to resolve this so that we don't get into a position of jeopardizing an offer of settlement, which I would think the plaintiff would not want to do, because this is not de minimis. We're talking about $7½ million.

And neither are any of these parties, so far as I can see, lacking in responsibility. They are all, I would think, fairly substantial people. And while some are government, your clients are businessmen.

MR. SEYMOUR: That's right.

THE COURT: So I'll take a recess for about half an hour and let you fellows chat.

MR. FREEMAN: Your Honor, if I may have five minutes to simply respond to Mr. Seymour, and perhaps I can clarify a few misconceptions that other counsel might have.

I'd like to just clarify a couple of points that Mr. Seymour made, so we could have that on the record before the recess.

THE COURT: All right.

MR. FREEMAN: First of all, I think I must emphasize again that the definition of the private class only includes apartment buildings, hotels, and office buildings. It does not include the vast bulk of private construction: housing, town houses, garages, warehouses, banks, gas stations. That is the reason for the so-called discrepancy of $24 million between the statistics used for allocation and Emhart's total sales.

That simply points up the favorable nature of the settlement from the plaintiffs' standpoint because we used Emhart's total sales, even though some of those sales went to people who were not included in the private class.

The second point is, of course, that the vast bulk of private construction does not use master keys or contract hardware as defined in this case and, of course, the sales were excluded with respect to those.

That similarly explains the alleged gap in the Dykeman study. All public construction is included in the class definition, whereas all other private construction other than offices, hotels and apartment buildings is excluded from the private class.

Therefore, as pointed out in the Emhart memorandum, public construction, according to the Dykeman study, is 50 per cent, and private construction is 10 per cent - which is about an 80/20 split. But they only add up to 60 per cent of the total jobs sold by distributors, minus there's also a factor of unknowns.

With respect to the --

THE COURT: Now, wait a minute.

While you are talking to the Court, for the

record, I think that we ought to make sure that Mr. Seymour is hearing what you say, because then you won't have to repeat it for him.

MR. SEYMOUR: I'm hearing what he's saying.

THE COURT: Are you? Are you able to hear him all right?

MR. SEYMOUR: Yes, your Honor, I am.

THE COURT: All right.

MR. FREEMAN: That's the other thing that I would like to get into. Mr. Seymour talks about a lack of evidence here. We have filed with this Court a lengthy designation of evidence, as well as a brief, a pre-trial brief. That brief has been on file with this Court for over a year. There's a designation of more than 110 pages which sets forth all of the things that Mr. Seymour wished to find out about.

In addition, all the depositions and various other material that has been assembled in this case, as well as the deposition exhibits, have been filed with this Court pursuant to normal procedures. And they are available for review by counsel. Since we're going to trial against two of the defendants, we did not think it appropriate to lay out all our evidence and all our theories to satisfy Mr. Seymour

at this point.

THE COURT: All right.

Now, if you don't mind, Mr. Freeman, instead of giving a full and complete rebuttal --

MR. FREEMAN: I don't mean to. I'm sorry.

THE COURT: -- to Mr. Seymour at this point, I feel that there's maybe some lack of communication or some failure to recognize everything that has been communicated. And I thought if you fellows sat down and talked for a few minutes we might narrow exactly what we're disputing about.

MR. FREEMAN: The thing I simply wish to point out is that these points that I'm making have been made in papers previously filed.

THE COURT: Sure.

MR. FREEMAN: And that the evidence that he is talking about is on file with this Court, as well as the Emhart statistics were filed with the Court at the time we sent out class action notice. All of that material is in the file.

THE COURT: Right.

But he spoke so well of you that I thought, you know, that you're on a friendly basis and you can now point out to him.

He came up here, he says, sort of on the fly -

that's the impression I get - and not really aware of all of this information which you have placed upon the record. I thought if you could talk with him a few minutes, maybe you could get down to something that would either eliminate this problem or have a more restricted and complete evidentiary hearing. We will see just where we do stand.

MR. FREEMAN: I agree, your Honor.

The only other problem - I will attempt to do it. I do not feel it will alleviate his objections, - the main reason being that the counsel who filed these objections for Mr. Seymour previously worked in our office during the preparation of this case and so Mr. Seymour's office should be thoroughly familiar, since he hired our associate away from us.

I cannot understand his representations that he's up here on the fly.

THE COURT: Well, maybe he just forgot. You know, he got up early this morning.

MR. FREEMAN: Thank you, your Honor.

THE COURT: We will take a short recess, anyway.

(Short recess.)

THE COURT: We had a notice that a Mr. Simon was going to appear today.

MR. KING: Mr. Simon, did you say?

THE COURT: Yes.

MR. KING: Yes, your Honor. I appear in his behalf.

I'm Joe King, your Honor, from Howrey & Simon in Washington. I appear on behalf of Exxon Corporation and eight affiliated firms.

Your Honor has been very patient this morning and I will attempt just to highlight some of my objections.

THE COURT: Wait a minute. You appear for Exxon Corporation?

MR. KING: Yes, your Honor.

THE COURT: And you're with what firm?

MR. KING: Howrey, H-o-w-r-e-y and Simon, Washington, D.C.

THE COURT: All right.

MR. KING: For purposes of making this abbreviated, I adopt in large part what Mr. Seymour has said this morning, to expedite the matter.

THE COURT: Yes.

MR. KING: But I do have a few other points I would like to emphasize.

Over the recess I believe I've been able to learn some matters which will help shed light on the problem raised this morning. Let me state from the outset we make no objection to the amount of the settlement.

THE COURT: All right.

MR. KING: I thought it was significant that Mr. Dixon's eloquent statement spoke to the amount of the settlement and did not speak to the allegation problem -- allocation. And we do not object to the amount of the settlement.

THE COURT: All right.

MR. KING: But we come back to the problem of the 80/20 allegation.

THE COURT: "Allocation."

MR. KING: Allocation.

Now, let me emphasize at the outset that one of the problems I believe we have is that there is a very real conflict of interest on the part of counsel for plaintiff representing both private bodies and national class public bodies in this case.

If I could direct your attention for just two sentences of the memorandum filed by Mr. Montague and Mr. Freeman, I think it would highlight for the Court something that struck me immediately. Those

sentences read that, "There were meetings and numerous discussions among plaintiffs' counsel prior to complete acceptance of the settlement agreement." And that, "These discussions led to an agreement on the amount of the settlement and the allocation between public and private bodies."

THE COURT: Right.

MR. KING: These were discussions among plaintiffs' counsel.

THE COURT: Yes.

MR. KING: Now, I think that's significant. This memorandum, filed in support of the settlement by counsel for the class representatives, at the outset makes scant reference to the statistics filed in support of the settlement here today.

There is some reference to the analysis of the Emhart statistics in the memorandum. But it was only today, after objections were made, that any further data had been brought forward in the affidavit filed by Mr. Freeman and his colleague.

Now, I'd like to address myself very, very briefly to both points.

THE COURT: What affidavit is that?

MR. KING: Mr. Freeman filed an affidavit, I believe Miss Carol --

MR. FREEMAN: Gibbs.

MR. KING: Dealing with the Price, Waterhouse study.

THE COURT: "Freeman." I thought you said "Friedman." All right.

MR. KING: I emphasize this point because this Court has a fiduciary duty to all class members and when we have an allocation between members of two competing classes based upon discussions between plaintiffs' counsel, I respectfully submit that this Court must scrutinize very, very carefully that division of the settlement fund reached among members of the plaintiffs' class representatives who do have a conflict of interest.

Now, the justification submitted here today for the 80/20 allocation I believe could not hold up, for two basic reasons. But let me make one earlier point before addressing myself to those statistical reports referred to.

THE COURT: All right.

MR. KING: If Mr. Freeman is so confident --

THE COURT: No, no. What are the points? Just get to the points. Never mind who made them.

MR. KING: The points are that the notice to

the class members that have gone out under the signature of the clerk of the court in paragraph B3 makes it clear that any purchaser from any of the defendants, not just from Emhart, can share in this settlement fund.

THE COURT: Yes.

MR. KING: For that reason alone, the statistics of Emhart only are irrelevant because we do not know --

THE COURT: Well, they're not irrelevant.

MR. KING: I believe they are, if your Honor please. We need statistics from the industry.

THE COURT: All right. Is that your first point?

MR. KING: That's the first point. Because the statistics representing the purchases of the other defendants may be out of proportion.

Now, I appreciate the hour is getting late and I would like to refer, if I might, on a matter dealing with the Price, Waterhouse statistics.

I attempted, over the recess, to obtain from the Deputy Clerk the deposition of Mr. Dykeman. That is not on file yet. It was recently taken. But that is the deposition referred to in Paragraph 3 of Lee Freeman's affidavit filed today.

Based on my discussions with counsel for the defendants, they are of the opinion that the data presented in Mr. Freeman's affidavit is unrepresentative of an 80/20 allocation. And I would like to ask the Court's permission --

THE COURT: What is? Repeat that, please.

MR. KING: That the information contained in the report relied on by Mr. Freeman, mainly the Dykeman report, is not representative of an 80/20 split.

I would like the Court to permit me to yield for just a few minutes to Mr. Bates, who has been in this case for some period of time, who is better able than I to point out the pitfalls in the Price, Waterhouse data. And I think you will find that very, very, very convincing as to why we do not have before this Court at this time adequate data of an evidentiary nature upon which to adopt the 80/20 allocation.

Let me conclude my remarks by saying that as I'm sure after listening to Mr. Bates you will be convinced that the only fair way of having this settlement approved - and again, I have no objection to the size of the fund - is to have all claimants file their claims, whether public bodies or private

bodies.

And if Mr. Freeman is convinced and confident that the 80/20 formula is accurate, well, then it will all wash out; there will be 80/20.

Now, conceivably my clients will get less, conceivably it's not 80/20. Your Honor mentioned the term 6 per cent, or 6 point some odd. We don't know that. But I submit to this Court that there's no evidence before this Court to support the 80/20.

I think Mr. Bates will remove in your Honor's mind --

THE COURT: Well, let's hear from Mr. Bates, then. You've served to introduce him.

MR. MONTAGUE: Your Honor, before Mr. Bates --

THE COURT: Mr. Bates? Are you talking about the same Mr. Bates who represents another defendant?

MR. FREEMAN: Yes.

MR. KING: Your Honor, the reason I say that is I received this affidavit over the break. I've had discussions with him. I believe he has knowledge which can be of great help to this Court, if only as a friend of the Court, not speaking on behalf of a party.

I believe he can put in perspective some of the statements in Mr. Freeman's affidavit to show

that this is not representative of an 80/20 split in the industry.

THE COURT: You are not able to give me that information?

MR. KING: I can comment in a cursory manner, your Honor.

THE COURT: What?

MR. KING: I can comment in a cursory manner.

THE COURT: Well, in a cursory manner you said you don't think these statistics are sound, or the information is inaccurate, or what. But that's very cursory.

MR. KING: Because I have not had time, your Honor.

I believe Mr. Bates could explain it to the Court more fully, or I would ask leave to file a supplemental memorandum within, say, ten days. Because I believe we have a real problem in the statistics, in the statistical presentation here.

THE COURT: Do you, at least, know the nature of the problem? What is the nature of the problem?

MR. KING: Well, for example, I'm told by counsel for the defendants that the statement in Paragraph 3A, that master key projects from the files --

THE COURT: What are you reading from?

MR. KING: Page 2, your Honor.

THE COURT: Of what?

MR. KING: Mr. Freeman's affidavit.

THE COURT: Lee Freeman's affidavit filed today?

MR. KING: Yes, your Honor.

THE COURT: Page 3?

MR. KING: Page 2, Paragraph 3A at the top.

THE COURT: All right.

MR. KING: I am told that rather than the files of more than ninety contract hardware distributors, Lines 2 and 3, there are probably the files of no more than twenty to thirty sampled. And this was not a random sampling.

Also I am told - and I can be corrected by defendants' counsel if I'm misstating - that representatives of the plaintiffs selected which files would be looked at throughout the country.

I am told that the criteria or the purpose of this study was not to determine an 80/20 formula, but to determine a markup on purchases by public bodies. So I believe that if given time, or if the Court will listen to Mr. Bates, it can be explained to this Court that this study relied on by Mr. Dyke

man is not a sound basis upon which to make a conclusion that the 80/20 formula has any validity in this industry.

THE COURT: Well, I'm not going to hear Mr. Bates. Mr. Bates has no standing to object and I'm not going to let him sneak in and make an objection under your aegis. If you have something, that's one thing.

Mr. Bates is representing other defendants in this case and he has no standing whatsoever to object on any basis to this proposed settlement.

MR. KING: I'm sorry, your Honor. It was not to make an objection, but to assist the Court in understanding the data put before it.

Possibly, then, if I could have ten days to file a memorandum I could aid the Court in making certain that all the facts were before it.

THE COURT: I'll give you till Friday.

MR. KING: Thank you, your Honor.

THE COURT: If you want to file a memorandum.

Anybody else?

MR. GRIFFIN: Yes, your Honor.

Your Honor, my name is Joseph Griffin. I'm here on behalf of the law firm of Arent, Fox, Kintner, Plotkin & Kahn.

THE COURT: Joseph who? I'm sorry.

MR. GRIFFIN: Griffin, G-r-i-f-f-i-n.

THE COURT: Yes.

MR. GRIFFIN: Here on behalf of the Washington, D.C. law firm that represents a large number of private owner-builders. We have attached a list of those owner-builders to my notice.

I will be very brief, your Honor. I would just like to emphasize and support the objections that Mr. Seymour and Mr. King have raised. And I think there are two which you've heard at some length. But I want to emphasize them from a slightly different perspective.

One is it seems to me that the counsel here in supporting this settlement have the burden of proof as to this 80/20 split, and they simply have not met it. They talked at length this morning about the evidence being in the record.

I was here yesterday and reviewed the record, and while it might be said that upon a day long review of the record I could have picked out bits and pieces that lent some support to some aspects of the 80/20, I don't think that's full compliance with the notice requirement and I don't think private owner-builder clients should be forced to

do that.

There's no reason why the notice or some supplemental pleading could not be filed with a page or two that gave the notice. Rather than this last minute, you know, morning-of-the-hearing affidavit sort of thing, which I think is totally inexcusable.

If they are going to purport to support this figure, then they should do it in a timely fashion and all the members of the class should have adequate notice, and they should not have to come here and read the thousands of pages of depositions and documents to try to piece together what the support for the formula might or might not be. So I think on simple due process grounds they failed to meet their burden.

Secondly, I think Mr. King has pointed out substantial questions as to these studies and I understand he is going to submit a supplemental memorandum on those points.

The other point, I think, your Honor, which I equally feel strong about, is the whole conflict of interest situation. I don't think this Court can disagree that Mr. Montague certainly has at least an apparent conflict of interest.

I do not, in any way, question him or his honor. I know him to be an honorable man. But again the standards here are one of apparent conflict of interest.

He is going to have to be representing members of two different classes distributing the settlement in accordance to his formula or some other formula. And it seems to me there is an obvious need here for some independent outside counsel who represents the private owner-builders, and them only. Therefore, I would strongly support Mr. Seymour's suggestion that such a counsel be appointed - and the capacity is up to your Honor; whether he would be a class representative, or claims review committee, or whatever. But it seems to me there's a clear need for that.

That's really all I have to say, your Honor. Thank you.

THE COURT: All right.

MR. BURNS: Good morning, your Honor. My name is Fred Burns, with the firm of Sager & Burns.

As you recall, we have been here previously on behalf of three private parties plaintiff - Bermar Construction, et al.

I would just like to point out to your Honor a

few observations that I think might be appropriate in light of the objections of certain very large private parties.

During the litigation the three parties I represented in the private sphere had to drop out of the litigation. I think this is significant when you analyze the fairness of the settlement.

One of the parties, your Honor, went bankrupt; one of the parties had a change of ownership and lost interest; and the only party that continued, the only owner-builder that continued had found that it was too time-consuming to participate in the litigation. As a businessman he preferred to continue building new jobs and maintaining his relationships, rather than to be deposed and to go through the interrogatory process.

Additionally, I might point out that they were not able to come up with the costs of litigation that were necessarily involved in this litigation.

By contrast, your Honor, I might point out that the public entities -- we also had a problem with records. However, in the public entities I note that they were able to come up with the costs to take a vigorous stance in the litigation, they did retain records so that they could prove damages,

and they were prepared to answer interrogatories and to go through the deposition process.

THE COURT: What's the point of this? Are you seeking an allowance for counsel?

MR. BURNS: No, your Honor.

THE COURT: Or to proceed in forma pauperis, or what?

MR. BURNS: Your Honor, the point of this is, I believe, the allocation of 80/20 not only is supported by the records of showing that this was what was actually purchased in the market place, but it also shows that the governmental entities are getting a larger share of the recovery and this could be possibly due to the more aggressive posture they were able to take in the litigation - both by being able to respond to the discovery and to handle the costs inherent in discovery.

THE COURT: What makes you believe that? Why don't you believe that they're being overly generous with the private parties when they allocate 20 per cent to them?

MR. BURNS: Well, if they are, then the private parties are not being adversely injured - and the only objections are by the private parties.

THE COURT: I know they are objecting. And so

are you.

MR. BURNS: No, your Honor.

THE COURT: But you're not supporting your objection with anything.

MR. BURNS: I'm supporting the allocation of the 80/20 --

THE COURT: That's what I mean.

MR. BURNS: -- and saying that it reflects possibly the --

THE COURT: Possibly.

MR. BURNS: -- strength of the litigation as reflected.

THE COURT: And I say it possibly reflects an overly generous treatment of the private parties.

MR. BURNS: It might well.

THE COURT: What?

MR. BURNS: Yes, your Honor, it might. But it doesn't reflect an unfair allocation, an inadequate allocation to the private parties plaintiff is what I'm indicating.

The private parties plaintiff who have come in late in this litigation now do have adequate resources and adequate counsel and were well aware of the litigation for many years. It's been well publicized.

THE COURT: All right. So you support them.

MR. BURNS: I support the settlement on the 80/20 allocations contained in the settlement offer. I believe it's more than adequate for the private-parties plaintiff.

THE COURT: You're in favor of adopting the settlement.

MR. BURNS: Yes, your Honor.

THE COURT: All right.

MR. BURNS: Thank you.

THE COURT: I didn't put words in your mouth, did I, Mr. Burns, when I suggested that maybe this was more than a private party --

MR. BURNS: No, your Honor.

THE COURT: I see. I anticipated what you were going to say.

MR. BURNS: Thank you, your Honor.

MR. MONTAGUE: Your Honor, I'm Laddie Montague, co-liaison counsel. I would like to respond to some of the objections that were made this morning.

But one short matter before I do that. I would like to point out to the Court that I think it's equally as important to look at the approval which has been given this settlement and the proposed allocation, as well as the objections. And based on

the information which we've compiled from responses to the notice of the public class, there were approximately 20,000 notices sent out and there were no objections whatsoever to either the settlement or the allocation.

With respect to the private class, there were approximately 15,000 notices which were mailed and delivered. As a result of that, there were approximately eighty lawyers who entered their appearance. There were approximately another seventy-five to eighty claimants who wrote in and affirmatively wished to be included in the settlement. And of that amount there are, I believe three lawyers who came up today which objected to the settlement.

So I think that overall there has been an overwhelming support, both of the settlement and of the proposed allocation.

Now, the objections are basically - I should say really exclusively aimed at the allocation and not the settlement. I don't believe anyone has voiced any objection whatsoever to the $7.5 million overall.

THE COURT: All right.

MR. MONTAGUE: And, in a sense, I can understand the objections to the private class allocation

because of experience of the counsel here today in other class actions in the construction industry. I believe they've referred to the gypsum case, the plumbing case, and in those --

THE COURT: What was the second one?

MR. MONTAGUE: Plumbing fixtures, your Honor.

In those cases, it's true that the builder-owners got, by far, the largest share of that settlement.

In the gypsum case, which was a total settlement not a partial settlement like here, I believe the builder-owners got 37 per cent.

In the plumbing case I believe it was substantially more - it may have been as close to 75 or 80 per cent.

So that those attorneys, based on that background and that conditioning, would expect that an allocation in this case should certainly be more than 20 per cent for the builder-owners.

Now, when I was first confronted with this problem I had the exact same reaction, even perhaps more vigorously than some that were voiced here today. In fact, the allocation initially suggested in negotiations was less than 80/20 per cent for the builder-owners, for the private class.

In order to satisfy ourselves as to what the proper allocation was, we made a very detailed study of the statistics in the Emhart files and those sales statistics, your Honor, are unique. That type of statistic had never appeared in any other builder-owner class, or any other class action where they were available to base an allocation upon.

Moreover, those statistics, as pointed out in the Emhart memorandum, were made and kept in the regular course of business, with contemporaneous records and, probably most importantly, were prepared before this litigation ever started. So that they certainly are not self-serving statistics or statistics manufactured in order to support the settlement; they were pre-existing to the filing of these cases.

Now, another reason why the private class is much more limited in this case than in other cases is because there's a very large segment of the traditional builder-owner class which is not included here. That is, particularly home building.

Looking at some of the statistics that appeared in the Gibbs affidavit which was filed this morning for overall construction costs, the building of

residential homes in 1966 accounted for 62 per cent of private building, and in 1968 included as much a 71 per cent of private building. All of that was included in the gypsum case and all of it was included in the plumbing case, or a substantial part of it. None of it is included in this case.

Thirdly, from what we've been able to discern so far master key systems comprise a lesser amount of the total construction cost in private buildings than they could in public buildings. And I base that on the testimony of the purchasing agent for the private plaintiff representatives in this case, Mr. Scavo, who testified that the cost of building hardware in a highrise private building was approximately one-quarter of one per cent. Whereas, the purchasing agent for the City of Philadelphia, in his deposition, testified that the percentage of hardware to the total construction cost varied between a fraction of one per cent to as high as 4 or 5 per cent.

So that all indications lead that the total construction figures, which some of the objectors have suggested be used, are just inappropriate in this case. And it explains why the allocation to the private builder-owners, which are limited to

apartments, hotels, motels and office buildings, is much smaller in this case than it has traditionally been in the past and other cases.

Now, the records which we are relying on, the Emhart records, they are the exact same records against which the adequacy of the settlement was weighed. They were satisfactory to everybody for the weighing of that settlement and they certainly should be equally as satisfactory to weigh the allocation and for a basis of the allocation.

Now, the objectors also asked that there should be no allocation until claim forms are filed. We disagree with that - particularly in the context of a partial settlement as we have here. First of all, the defendant is settling two cases, two classes. And I don't believe that a class settlement can be approved unless each class knows exactly what it's getting.

Now, in this case, with the bifurcated trial of liability and damages, there is no present intention to file claim forms until the liability trial, which is scheduled for September, is completed. Accordingly, if we were to rely on claim forms there could be no allocation until after the liability trial. Therefore, there could be no approval of the

settlement because no class would know what it was getting until after the liability trial and claim forms were filed.

We would then be in a situation where Emhart Corporation may have a settlement disapproved, and yet it missed the boat on the liability trial. So it puts the whole case in a procedural uproar.

Now, it may be said that perhaps a claim form could be sent out right away.

I would suggest, your Honor, that that would be inappropriate for the following reasons: Number one, the administration of such a claim form would certainly disrupt the plaintiffs' preparation for the upcoming trial and, secondly, and perhaps more importantly, any type of claim form procedure is a very costly administrative process.

It's costly for the individual claimants who have to dig through their records and pull out the information, it's costly for the class counsel who have to administer that.

Most important is that we really don't know what we're going to require on that claim form until we've completed the liability trial. That is going to dictate for how far back we have to go, the type of information that's going to have to be

proved to establish damages.

It may be under some circumstances, as Mr. Freeman alluded to earlier, that there will be a demographic or other statistical distribution in the government classes. If that is the case, then a claim form filed in the private case versus a demographic distribution in the public cases wouldn't be compatible as a basis of allocation.

It is interesting, your Honor, to compare here the method of allocation which we've used and the basis for it as that used in the gypsum case. And I would like to read to your Honor from the memorandum which was filed in the gypsum case in support of the allocation amongst the classes which was made prior to claim forms being sent out and was approved by the Court prior to claim forms being sent out.

This is a memorandum of which Mr. Seymour was a signator. "The independent class representatives evaluated the available information and reached a reasonable proportionate estimate of their respective economic interests. The inner class allocation agreement represents a rough translation of the litigating and market facts of this case into a percentage ratio to be applied against the total

recovery."

I think that we have done certainly no less than what was done in the gypsum cases and which was approved by the Court. In fact, I suggest that the basis for the allocation here was not a result of an arbitrary negotiation among able counsel, but rather was based on very definite specific statistical sales information which related directly to the problems and to the products and the customers involved in this case.

Now, there has been a suggestion, your Honor, that there be some form of class committee and the objectors, in support of that request, suggest that I have a conflict in representing both the public and private classes. And I would like to respond to that, if I may.

I don't agree with that assertion, for the following reasons: Number one, both Judge Wood, in 1970, and this Court last year found that the representation of both classes was adequate. In fact, the Court said in its opinion in 1975, and I'm paraphrasing - particularly with respect to the Philadelphia class: That if anyone didn't like the representation then they could opt out. And that would equally apply to the private class.

Secondly, no other class members but those who are present here today have challenged the representation. And indeed Gulf Oil Corporation, which was one of the persons who wrote in and objected to the allocation, specifically said that it wished to be represented by class counsel and was not filing an entry of appearance.

THE COURT: Who was that?

MR. MONTAGUE: Gulf Oil Corporation.

Thirdly, I believe there is no conflict, mainly because the allocation between the classes here was not arbitrarily negotiated, but it was based on actual sales statistics. So there was no opportunity to even assert any type of conflict.

I want to point out very clearly that if it weren't for these class representatives there would be no national private class action brought and there would be no settlement at all today. It is true also that the national public class would not be here today.

Now, these allegations that have been raised are troublesome, and I recognize that, your Honor. And because they have been made, just the fact that they are made alone is troublesome enough to me.

In order to put to rest any inferences of a

conflict, I would accept the suggestion which has been made to your Honor that an attorney for builder-owners who is now of record be appointed to a committee under my chairmanship to be consulted on future questions relating to both allocation and distribution to the private class.

I leave that strictly up to your Honor (1) if you will accept it and (2) as to who should be appointed.

THE COURT: All right.

MR. MONTAGUE: I would like to state, however, that I would hope that such formation of a committee would not materially increase the costs to the class of this litigation.

One last point I would like to make - there has been some talk about the Dykeman study. And Mr. Freeman, I believe, will concentrate on that substantially more. But there's a significant point about that study.

That study is not relied on in and of itself. That study happened, as far as the plaintiffs were concerned, to be an accident. It was not made by plaintiffs; it was made by the litigating defendants' expert witness accountant. It was made not for purposes of reflecting on the settlement, but for pur-

poses of preparing their defense in liability.

It happened to come to light at a time when Mr. Freeman and I were taking the deposition of Mr. Dykeman. And it just so happened that, looking at it, it corroborated exactly what was shown in the Emhart sales figures.

So that it was not a study, again, that was prepared (1) by plaintiffs; (2) for the purpose of substantiating this settlement and the allocation. It was merely an independent piece of statistical work which happened to corroborate what the representative plaintiffs have already suggested as a proper allocation.

Thank you.

THE COURT: All right.

MR. FREEMAN: Just very briefly, your Honor, with respect to the Dykeman study, because some question was raised.

We did not learn of the existence of that study until April 20th, when we took Mr. Dykeman's deposition, and we did not get the documents relating to that study until three or four weeks thereafter. And it was from those underlying documents that we ascertained how many distributors were reviewed in preparing this summary and how many projects were

used.

We have the instructions given to Mr. Dykeman regarding the preparation of the study. I would state for the record that Mr. Dykeman refused to testify regarding the conclusions that he would draw from the study.

As your Honor knows, that's a matter that's being contested on motion here. We have set forth in papers the fact that Mr. Dykeman refused to testify regarding this study. Therefore, as Mr. Montague said, we are simply using it to corroborate. We do not place reliance on that study. The settlement depended upon the Emhart sales statistics which were available to us prior to the negotiation of the settlement.

THE COURT: Came to your notice when?

MR. FREEMAN: Came to our notice April 20th, 1976, at the time that Mr. Dykeman's deposition was taken.

THE COURT: Long after this allocation.

MR. FREEMAN: Long after the allocation. This is just something that corroborates it.

And since Mr. Dykeman refused to testify about the study, we cannot place any great reliance on it.

I would add that in response to Mr. King and

Mr. Simon, we did not know that they were interested until we received a letter sometime in the middle of May, at which time I called Mr. Simon on two occasions. Mr. Simon was out. I immediately sent Mr. Simon a copy of the memorandum in support of the settlement and the settlement agreement, as he had requested by letter.

And as with Mr. Seymour, if anyone had asked for statistics or any help in preparing for this hearing, our office responded to those requests and tried to send out as much information as possible prior to the hearing.

I just say in terms of being put on notice, the class action notice went out on March 29th. Mr. Simon was well aware of this case through reports and through personal conversations with myself. The case was no mystery to anyone.

I would like to add just briefly for the record, your Honor, that the Assistant Attorneys General from a number of states are here and I would like the record to reflect their presence. I can give that to you now or simply tell the reporter later.

California, Florida, New York, Kansas, Maryland, Louisiana, Ohio, Arizona, New Jersey, and

then, of course, Pennsylvania, Illinois, Indiana, Wisconsin, Michigan, Minnesota, West Virginia and Colorado.

THE COURT: No primaries scheduled for today, then?

MR. FREEMAN: They are all here in support of the settlement, your Honor.

THE COURT: All right.

MR. FREEMAN: And I might add that in view of what has been raised I, too, would have no objection to the appointment of a spokesman from the private sector to serve on a committee with Mr. Montague.

THE COURT: Anything further?

Were you interrupted before, Mr. Seymour?

I took a recess in order, I thought, to give you and other counsel an opportunity to further exchange information and explain these last minute affidavits in sort of face to face discussion rather than through the Court, to see whether that would be helpful.

Has that been of any assistance, do you think?

MR. SEYMOUR: I think it has, your Honor.

While I still have reservations about whether the statistics of one defendant should be used as the sole or main basis of an allocation agreement,

I have heard and listened to counter suggestions not only of the class representatives, but I believe of the Court, and I have given that weight. I feel that there are other considerations which would impel me to feel that my reservations are outweighed in the present circumstances. And I would like to state what those are, because I did vigorously press that objection.

I gained the clear sense from oral argument today and from discussion with the class representatives that the 80/20 split is not fixed in cement and will not automatically govern any future allocations that may be made in this case. And the fact that the allocation is for Emhart and for Emhart only is an important consideration to me.

I also feel that there is a tremendously strong policy in favor of settlement in class actions. And since I am a plaintiffs' lawyer, and since I approached this case with the same philosophy as Mr. Montague and Mr. Freeman, I feel that great weight has to be given to the desirability of simplifying this litigation for trial.

I also am satisfied from my discussions with Mr. Freeman and also from reading the Gibbs affidavit carefully that at least as to the questions

I raised about the accuracy of the Emhart statistics. I'm satisfied now that I understand the basis of those statistics and I no longer have those reservations.

Finally, I am impressed by Mr. Montague's suggestion of a willingness to have independent private owner-builder counsel join him as a committee member in future matters of allocation and distribution. I think that helps the class in the future. It certainly helps to remove any question of conflict.

And I think that based on those considerations I would, for the purposes of this settlement, not any longer oppose the 80/20 split.

THE COURT: All right.

Well, I think I might say what you've said reflects the initial impression of the Court with respect to these matters. I am not definitively ruling now, because I have allowed I think it was Mr. Joe King until Friday to file a memo setting forth some support for an objection consisting of an explanation or critique of the Dykeman data that's been submitted.

All right. Anybody else? Anybody whose name should appear on the roll of those present who hasn't been identified and wishes to be noted?

MR. BATES: Your Honor, my name already appears on the roll and I believe I can anticipate your ruling, but on behalf of defendants we would like to be heard on the settlement, not on the amount but on the allocation - and particularly on the Dykeman materials.

THE COURT: Is there an objection to that?

MR. MONTAGUE: Yes, your Honor. I have a threefold objection.

Number one is I do not believe that the defendants filed any written objections to the settlement, so that they did not comply with the notice.

Number two, I believe that they do not have any standing to object to the settlement, and we filed a memorandum stating our position on that.

And, number three, with respect to the Dykeman material, I don't know what Mr. Bates is going to say, but perhaps he is going to be impeaching a study of his own witness. I would object on that ground.

THE COURT: Mr. Freeman?

MR. FREEMAN: I would simply object under lack of standing, your Honor, and I think it is clear that whatever input Mr. Bates wishes to have

in the case will be put in the record through Mr. King.

He can give Mr. King his advice and counsel regarding the Dykeman study. As we've stated, we're not relying upon the Dykeman study - we're just pointing to it as another piece of corroborative evidence.

THE COURT: In view of the objections, Mr. Bates, the Court will not hear you with respect to any objection or comment upon the settlement proposal.

All right. I guess that takes care of this particular matter, does it?

MR. KING: Your Honor, may I have one moment?

THE COURT: From where you are, Mr. King. Yes.

MR. KING: Beg pardon?

THE COURT: I'll give you a moment. I'm watching the clock.

Now, what is it?

MR. KING: Your Honor, with regard to Mr. Seymour's suggestion that his presence on the committee would help to remove a conflict, I agree and I would endorse his presence on the committee. But I don't believe that will remove the conflict, as long as Mr. Montague wears two hats.

Thank you, your Honor.

THE COURT: All right.

We have other business this afternoon. Will it be necessary to have those hearings on --

Those are motions to compel with respect to discovery matters, right?

MR. FREEMAN: Yes, your Honor. I think it will be necessary.

THE COURT: Well, we have to have a hearing on them. Will it be necessary to have a record? Do we have to have it in open court, or can those be heard in chambers? Because we are also having a pre-trial conference on this matter, aren't we?

All right. We will adjourn for an hour. We will resume here at 2:15.

MR. FREEMAN: Thank you, your Honor.

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- x
:
IN RE: : M.D.L. #45
MASTER KEY ANTITRUST LITIGATION :
- x

I hereby certify that the within and foregoing is a true and accurate transcript of my original stenographic notes taken to record all proceedings in the above-entitled cause, in the United States District Court, for the District of Connecticut, at Hartford, Connecticut, on June 2, 1976, before Hon. M. Joseph Blumenfeld, U.S.D.J.

_____
Official Court Reporter

DATED: _____, 1976.

Exxon's (Objectors) Group
Exh. 1
(6/20/76 hearing)

ILCO CORPORATION
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Financial Statements - June 30, 1975 and 1974

(With Accountants' Report Thereon)

P.M.M. & Co. Peat, Marwick, Mitchell & Co.

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
ONE BOSTON PLACE
BOSTON, MASSACHUSETTS 02108

The Board of Directors and Stockholders
Ilco Corporation
(a majority-owned subsidiary of Unican Security
Systems, Ltd.):

We have examined the consolidated balance sheets of Ilco Corporation and subsidiaries as of June 30, 1975 and 1974, and the related consolidated statements of earnings (loss) and accumulated deficit and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The Company is currently a defendant in law suits described in note 3(a); the final outcome of these suits is not presently determinable and no provision has been made in the financial statements for the effect, if any, of such litigation.

During the year ended June 30, 1975 the Company's parent established certain policies with respect to transactions between the Company and its affiliate in Rocky Mount, North Carolina, as more fully explained in note 2. Such policies may have resulted in prices different from those which may have been realized if such transactions had been conducted at arms length with non-affiliated parties.

In our opinion, subject to the final outcome of the litigation referred to in the second preceding paragraph, and except for the effect, if any, in 1975 of related party transactions referred to in the preceding paragraph, the aforementioned consolidated financial statements present fairly the financial position of Ilco Corporation and subsidiaries at June 30, 1975 and 1974, and the results of their operations and the changes in their financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Peat, Marwick, Mitchell & Co.

November 12, 1975

ILCO CORPORATION AN
(a majority-owned subsidiary of U

Consolidated Bal

June 30, 1975

Assets	1975	197
Current assets:		
Cash	$ 77,277	6,278
Accounts and notes receivable:		
Trade	1,924,941	2,323,366
Other	113,407	180,607
Notes receivable	-	227,300
	2,038,348	2,731,273
Less allowance for doubtful accounts	105,608	96,382
Net accounts and notes receivable	1,932,740	2,634,891
Due from affiliated companies, net	-	1,557,581
Inventories:		
Raw materials	434,563	569,042
Work in process	1,318,766	2,353,686
Finished goods	482,580	689,035
	2,235,909	3,611,763
Less reserves for obsolescence and discontinued products	275,563	320,188
Net inventories	1,960,346	3,291,575
Prepaid expenses	38,374	61,784
Total current assets	4,008,737	7,552,109
Property and equipment, at cost:		
Land	10,700	58,950
Buildings	191,038	942,534
Machinery and equipment	2,576,077	3,803,673
	2,777,815	4,805,157
Less accumulated depreciation	2,028,356	3,565,069
Net property and equipment	749,459	1,240,088
Property and equipment held for sale, at cost less accumulated depreciation of $1,312,595	238,801	-
Deferred tax benefit	67,760	67,760
Other assets	14,07?	15,067
	$ 5,078,82?	8,875,024

See accompanying summary of significant accounting policies and notes to consolidated financial statements.

SIDIARIES
Security Systems, Ltd.)

Sheets

974

Liabilities and Stockholders' Equity	1975	1974
rent liabilities:		
Notes payable to bank	$ 1,994,500	2,867,314
Checks in transit	103,590	507,371
Current installments of long-term debt	124,562	128,564
Accounts payable:		
Trade	1,182,667	1,325,657
Due to affiliated companies, net	88,767	-
Other	53,081	76,936
Total accounts payable	1,324,515	1,402,593
Accrued expenses	863,221	757,304
Total current liabilities	4,410,388	5,663,146
g-term debt, excluding current installments	578,621	852,681
ckholders' equity:		
5% convertible preferred stock of $100 par value per share; Authorized 13,500 shares; issued 13,364 shares	1,336,400	1,336,400
Common stock of $.10 par value per share; Authorized 8,000,000 shares; issued 5,658,181	565,818	565,818
Additional paid-in capital	1,286,069	1,286,069
Accumulated deficit	(3,088,469)	(819,090)
	99,818	2,369,197
Less cost of 10,000 common and 180 preferred shares acquired in 1974 and held in the treasury	10,000	10,000
Total stockholders' equity	89,818	2,359,197
mmitments and contingent liabilities		
	$ 5,078,827	8,875,024

BEST COPY AVAILABLE

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Consolidated Statements of Earnings (Loss) and Accumulated Deficit

Years ended June 30, 1975 and 1974

	1975	1974
Sales:		
Shipped by North Carolina affiliate	$ 9,591,568	714,016
Shipped from Fitchburg and other locations	3,156,918	16,621,983
Sales returns and allowances	(382,679)	(456,728)
Net sales	12,365,807	16,879,271
Cost of sales:		
Shipped by North Carolina affiliate	7,771,420	532,616
Shipped from Fitchburg and other locations	3,948,759	12,804,961
Total cost of sales	11,720,179	13,337,577
Gross profit	645,628	3,541,694
Expenses:		
Marketing	1,914,905	1,881,847
General and administrative	856,812	952,646
Total expenses	2,771,717	2,834,493
Operating profit (loss)	(2,126,089)	707,201
Other income and (expenses):		
Gain on sale of property and equipment	390,445	42,389
Interest expense	(401,703)	(498,308)
Other, net	(132,032)	131,121
Total other income and expenses	(143,290)	(324,798)
Earnings (loss) before Federal income taxes and extraordinary item	(2,269,379)	382,403
Federal income taxes	-	179,000
Earnings (loss) before extraordinary item	(2,269,379)	203,403
Extraordinary item (tax benefit arising from utilization of net operating loss carryforward)	-	179,000
Net earnings (loss)	(2,269,379)	382,403
Accumulated deficit at beginning of period	(819,090)	(1,189,025)
Dividends declared on preferred stock of consolidated subsidiary	-	(12,468)
Accumulated deficit at end of period	$ (3,088,469)	(819,090)
Earnings (loss) per common share:		
Earnings (loss) before extraordinary item	$ (.40)	.04
Extraordinary item	-	.03
Net earnings (loss)	$ (.40)	.07
Earnings (loss) per common share - assuming full dilution:		
Earnings (loss) before extraordinary item	$ (.40)	.03
Extraordinary item	-	.03
Net earnings (loss)	$ (.40)	.06

The accompanying summary of significant accounting policies and notes to consolidated

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Consolidated Statements of Changes in Financial Position

Years ended June 30, 1975 and 1974

	1975	1974*
Funds provided:		
Proceeds from sales of property and equipment	627,635	83,218
Decrease in non-current notes receivable	-	213,227
Total funds provided	627,635	296,445
Funds used:		
Loss (earnings) from operations before extraordinary item	2,269,379	(203,403)
Items which do not (use) provide working capital:		
Depreciation and amortization	(203,054)	(198,488)
Gain on sale of property and equipment	390,445	42,389
Working capital used (provided) by operations, exclusive of extraordinary item	2,456,770	(359,502)
Earnings from extraordinary item	-	(179,000)
Additions to property and equipment	187,419	311,393
Reductions in long-term debt	274,060	724,579
Purchase of minority interest in preferred stock of consolidated subsidiary	-	241,800
Additional assessment for prior years taxes	-	67,760
Dividends paid on preferred stock of consolidated subsidiary	-	12,468
Purchase of treasury stock	-	10,000
Total funds used	2,918,249	829,498
Decrease in working capital	$ 2,290,614	533,053
Changes in working capital:		
Increase (decrease) in current assets:		
Cash	70,999	(105,872)
Accounts and notes receivable	(702,151)	513,740
Due from affiliated companies	(1,557,581)	1,596,030
Inventories	(1,331,229)	(2,259,794)
Prepaid expenses	(23,410)	5,445
	(3,543,372)	(250,451)
Increase(decrease) in current liabilities:		
Note payable to bank	(872,814)	256,182
Checks in transit	(403,781)	507,371
Current installments of long-term debt	(4,002)	15,000
Accounts payable	(78,078)	(453,234)
Accrued expenses	105,917	(42,717)
	(1,252,758)	282,602
Decrease in working capital	$ 2,290,614	533,053

* Reclassified to conform to 1975 presentation.

See accompanying summary of significant accounting policies and notes to consolidated financial statements.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Summary of Significant Accounting Policies -

June 30, 1975 and 1974

Principles of consolidation:
The accompanying consolidated financial statements include the accounts of Ilco Corporation and its subsidiaries. The accounts of an immaterial foreign subsidiary have been translated to U. S. dollars at appropriate rates of exchange. Gains and losses from such translations are recorded to earnings in the year incurred. All intercompany accounts and transactions have been eliminated in consolidation.

Major stockholder:
The Company's parent, Unican Security Systems, Ltd., owns approximately 93% of the outstanding shares of the Company's common stock and 71% of the convertible preferred stock.

Inventories:
The Company values its inventories at the lower of standard cost or estimated realizable value, with such standards approximating cost as determined by the first-in, first-out method.

The reserve for obsolescence is calculated by means of an aging formula applied to the year-end inventory. Included in the total reserve at June 30, 1975 is $125,000 as a provision for losses on discontinued products.

Depreciation and amortization policies:
Depreciation is computed using primarily the straight-line and sum of the years-digits methods at rates based upon the estimated useful lives of the assets as follows:

Buildings	5-33 years
Machinery and Equipment	3-15 years

Income taxes:
Investment credits are recorded as a reduction of the provision for Federal income taxes in the year realized.

Earnings per share:
The Company computes earnings per common share based on the weighted average number of shares outstanding during the year; net earnings are reduced for preferred dividend payments. Earnings per common share assuming full dilution are computed by assuming the conversion of all 5% convertible preferred stock at the beginning of the year, unless the effect is anti-dilutive.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements

June 30, 1975 and 1974

(1) Labor strike and consolidation of operations

Towards the end of the fiscal year ended June 30, 1974 an affiliated company, Unic[redacted] Security Systems Corp., located in Rocky Mount, North Carolina, completed constr[redacted]tion of a manufacturing plant. At that time Ilco Corporation began shipping inventory to the affiliate, at cost. Such goods were to be completed by the affiliat[redacted] and shipped to Ilco customers as orders were received. (See note 2 for the pric[redacted] policies in effect between Ilco and the affiliate). At this time Ilco employed approximately 800 persons in its three manufacturing plants in Fitchburg, Massachusetts.

In September 1974 contract negotiations with the union were broken off and the Company's employees went on a prolonged strike which lasted until January 1975. Prior to the strike the majority of consumer goods assembly operations were permanently transferred to the North Carolina affiliate. After the strike ended Ilco resumed certain of its previous operations which had not been transferred. However, such operations required the services of only approximately 200 employe[redacted] and much of the plant capacity was not utilized. As a result of the strike and the reduction in the level of operations significant amounts of fixed costs for the year ended June 30, 1975 were not absorbed by operations.

Subsequent to June 30, 1975 the Company took action to reduce fixed costs as follows: (a) consolidated all Fitchburg operations into one plant; (b) further trimmed the number of employees to 150 (c) sold a warehouse and certain equipment no longer needed for approximately $237,000 (book value approximated $92,000); (d) contracted to sell one of the vacant plants for $250,000 (book value approximates $66,000); and (e) has available for sale the remaining vacant plant which has a book value of approximately $80,000.

(2) Transactions with affiliated companies

The sale in fiscal 1974 of inventory to the North Carolina affiliate (see note 1) amounting to $3.6 million is reflected in the financial statements as a transfer from inventory to amounts due from affiliated companies. As part of the arrangement to affect payment with respect to the 1974 sale, the Company repaid all debt and accrued interest payable to its Parent amounting to $608,475 and acquired from an affiliated company 4,620 shares of preferred stock of Keil, Inc., a consolidated domestic subsidiary, at a total cost of $225,000.

(Continued)

(4) Environmental action

In 1973 the Company was served with a writ for a suit in equity begun by the Director of the Division of Water Pollution Control of the Commonwealth of Massachusetts. The writ sought installation of anti-pollution devices to prevent unlawful pollution of the Nashua River. As the Company has ceased operations in the plant which was the subject of the writ, no further costs are anticipated with respect to this action.

(5) Sale of property and equipment

On June 2, 1975 the Company sold substantially all property and equipment of Orange Foundry, Inc., a wholly-owned domestic subsidiary. The Company received cash in the amount of $228,000 of which $100,000 each was paid directly to both the First National Bank of Boston and Massachusetts Business Development Corporation to reduce outstanding loans. Total gain on the sale was approximately $95,000. The subsidiary was principally involved in supplying certain component parts to the Company, which components will continue to be furnished by the buyer and other vendors. Purchases by the Company from Orange Foundry, Inc. amounted to $126,000 and $596,000 in 1975 and 1974 respectively.

In December, 1974 the Company sold to a leasing company for $250,000 assets with a net book value of approximately $93,000 (see note 2). The entire proceeds of the sale were paid to reduce notes payable to First National Bank of Boston and Massachusetts Business Development Corporation by $200,000 and $50,000 respectively.

Other major activity during fiscal 1975 included a $61,000 sale of equipment with a net book value of $10,000 to the Company's North Carolina affiliate (see note 2) and a $73,000 sale of equipment with a net book value of $3,000 to other customers.

(Continued)

(2) Transactions with affiliated companies, continued

During the year ended June 30, 1975 the Company's parent adopted a policy with respect to transfers of goods from Ilco to the North Carolina affiliate which calls for such goods to be transferred at the lower of Ilco's cost or net realizable value to the North Carolina affiliate upon resale of finished products to Ilco when customer orders are received. Ilco pays the North Carolina affiliate fixed percentages of the selling price paid to Ilco by customers. During 1975 such payments to the affiliate amounted to approximately 84% of the selling price. In addition, Ilco bears all selling expenses of which approximately $504,000 were transferred from the North Carolina affiliate.

Approximately $9.6 million of Ilco sales in 1975 were shipped by the North Carolina affiliate and billed through Ilco. In 1975 shipments of approximately $2.2 million from Ilco to the North Carolina affiliate are reflected in the financial statements as transfers from inventory to amounts due from affiliated companies. Such transfers resulted in a loss of approximately $360,000, which has been charged to operations in 1975.

During 1975 the Company sold to a leasing company for $250,000 equipment with a net book value of approximately $93,000. Such equipment was subsequently leased to the North Carolina affiliate by the leasing company. In addition, the Company sold directly to the North Carolina affiliate for $61,000 equipment with a net book value of approximately $10,000.

Certain other equipment with a nominal book value is being leased directly to the North Carolina affiliate by Ilco at an annual rental of approximately $41,000.

(3) Litigation

(a) During 1970 and 1971 the Company was named in a number of class actions against manufacturers of lock hardware alleging violations of antitrust laws. These actions were brought in various jurisdictions and have been consolidated for pretrial proceedings in the United States District Court for the District of Connecticut. During fiscal 1975 the Company was named a defendant in a number of cases brought by union employees through the American Arbitration Association. The total amount claimed approximates $207,000. In addition, the National Labor Relations Board has issued a consolidated complaint involving a number of alleged unfair labor practices; no dollar amount has been claimed. Legal counsel is unable to assess whether any of these actions have merit and the Company and counsel are unable to determine what damages, if any, may result from these actions.

(b) In September 1975 the Company settled an action brought in 1973 wherein, the Company was named as one of three defendants in a suit initiated by a former officer and director of the Company alleging breach of contract. The plaintiff sought ordinary damages of approximately $243,000 and punitive damages of $500,000. The action was settled by the Company under an agreement which called for $25,000 in cash payments to the plaintiff and delivery of securities valued at $11,250. The full amount of the settlement has been charged to earnings in the accompanying financial statements.

(Continued)

(6) Note payable to bank and long-term debt

	Interest rate	1975	1974
Demand notes payable to bank: First National Bank of Boston	Prime rate plus 2-1/2%	$1,994,500	$2,867,31
Long-term debt: Massachusetts Business Devel. Corporation due in monthly installments through 1980	Prime rate plus 3% (minimum of 9-1/2%)	216,532	418,89
Exeter International due in monthly installments through 1980	5%	422,000	464,00
Other maturing on various dates through 1978	6-1/2% - 7%	64,651	98,35
Total long-term debt		703,183	981,24
Less current installments of long-term debt		124,562	128,56
Long-term debt, excluding current installments		$ 578,621	852,68

Installments of long-term debt payable in succeeding years to meet principal retirement provisions of long-term debt agreements presently in effect are as follows:

1977	$124,562
1978	150,063
1979	174,912
1980	129,084
	$578,621

The Company has pledged its trade receivables and inventory as security for the note payable to the First National Bank of Boston. As additional collateral the Company has also pledged all of its real and tangible properties, subject only to prior mortgages and liens in favor of Massachusetts Business Development Corporation securing its loan.

(Continued)

(7) Capital stock

The 5% convertible preferred stock is noncumulative and nonvoting. Each preferre share is convertible at any time into twenty-five common shares. Accordingly, 334,100 authorized and unissued common shares are reserved for such possible conversion. The preferred stock is entitled to $100 per share in either voluntary or involuntary liquidation and is redeemable at the option of the Company at any time for $100 per share.

(8) Discontinued line of business

During the year ended June 30, 1975 the Company decided to discontinue its contract hardware business. Certain components relating to this activity are included in the year end inventory. The Company has provided a reserve of $125,000 for losses which may be incurred in the disposal of such components.

(9) Federal income taxes

The Company has continued to remain on a calendar year basis for tax purposes, although its fiscal year end for stockholder reporting purposes has been changed to June 30. As of December 31, 1974 the Company had available certain Federal income tax benefits which may be used to reduce taxable income or Federal taxes payable in future years. These benefits include net operating loss carryforwards amounting to approximately $1,456,000 expiring at various dates through 1979, foreign tax credits amounting to $160,000 expiring at various dates through 197 and investment tax credits amounting to $44,000 expiring at various dates through 1981. The net operating loss carryforwards expire as follows:

December 31, 1975	$ 308,000
December 31, 1976	4,000
December 31, 1977	4,000
December 31, 1978	584,000
December 31, 1979	556,000
	$1,456,000

The Company accounts for certain transactions on a different basis for book and tax purposes which normally would have given rise to a deferred tax liability at December 31, 1974 of approximately $470,000. Such liability has not been recorded due to the availability of offsetting tax benefits referred to in the preceding paragraph.

During fiscal 1974 the Company paid $67,760 in assessments from the Internal Revenue Service representing adjustments of taxable income of prior years. Such assessments have caused a timing difference in the recognition of income for book and tax purposes. In future years the Company will recover the amounts paid as the timing differences reverse.

(10) Pension plan

The Company has two non-contributory retirement plans covering substantially all employees. The Company's policy is to fund accrued pension costs. As of June 30, 1974, the date of the most recent actuarial valuation, the total of the pension fund assets was greater than the actuarially computed value of vested benefits. The pension expense for the year ended June 30, 1975 amounted to $96,000 ($88,000 in 1974). In future years such expense should be substantially reduced in line with the reduction in the number of employees.

(11) Lease commitments

The Company has entered into leasing arrangements for buildings and machinery and equipment with various lessors, including an affiliated company, Unican Security Systems Corp. Total rental expense for the current year under such leases is $263,380 ($239,553 in 1974), including $141,283 ($88,296 in 1974) paid to Unican Security Systems Corp. Minimum annual rental payments under such leases are as follows:

	Unican Security Systems Corp.	All others	Total
1976	$ 112,363	9,464	121,827
1977	112,363	7,133	119,496
1978	105,105	-	105,105
1979	87,727	-	87,727

Leasing arrangements with Unican Security Systems Corp. specifiy that either party may terminate the above leases upon thirty days written notice. Such leases have been included in the above schedule for their entire five-year term, as it is the present intention of management to continue the leases in effect throughout this period.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Consolidated Financial Statements - June 30, 1974 and 1973

(With Accountants' Report Thereon)

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
ONE BOSTON PLACE
BOSTON, MASSACHUSETTS 02108

The Board of Directors and Stockholders
Ilco Corporation
(a majority-owned subsidiary of Unican Security Systems, Ltd.):

We have examined the consolidated balance sheets of Ilco Corporation and subsidiaries as of June 30, 1974 and 1973, and the related consolidated statements of earnings and accumulated deficit and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The company is currently a defendant in two law suits as described in note 1; the final outcome of these suits is not presently determinable and no provision has been made in the financial statements for the effect, if any, of such litigation.

In our opinion, subject to the final outcome of the litigation referred to in the preceding paragraph, the aforementioned consolidated financial statements present fairly the financial position of Ilco Corporation and subsidiaries at June 30, 1974 and 1973, and the results of their operations and the changes in their financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Peat, Marwick, Mitchell & Co.

October 4, 1974

ILCO CORP[illegible]T[illegible]
(a majority-owned subsidiary

Consoli[illegible]te

June 30,[illegible]

Assets	1974	1973[illegible]
Current assets:		
Cash	$ 6,278	112,150
Accounts and notes receivable:		
Trade (note 5)	2,323,366	2,097,[illegible]9
Other	180,607	50,962
Notes receivable (note 4)	227,300	69,079
	2,731,273	2,217,[illegible]0
Less allowance for doubtful accounts	96,382	95,[illegible]69
Net accounts and notes receivable	2,634,891	2,121,151
Due from affiliated companies (note 2)	1,689,260	93,[illegible]0
Inventories (notes 2 and 5):		
Raw materials	569,042	1,014,868
Work in process	2,353,686	3,251,[illegible]2
Finished goods	689,035	1,989,[illegible]1
	3,611,763	6,255,321
Less reserves for obsolescence and discontinued products	320,188	703,[illegible]2
Net inventories	3,291,575	5,551,369
Prepaid expenses	61,784	56,[illegible]9
Total current assets	7,683,788	7,934,239
Property and equipment, at cost (notes 2 and 5):		
Land	58,950	58,950
Buildings	942,534	964,[illegible]7
Machinery and equipment	3,803,673	3,867,[illegible]2
	4,805,157	4,890,479
Less accumulated depreciation	3,565,069	3,723,[illegible]5
Net property and equipment	1,240,088	1,167,014
Note receivable, net of unamortized discount of $11,773 (note 4)	-	213,[illegible]7
Deferred tax benefit (note 9)	67,760	-
Other assets	15,067	16,[illegible]5
	$ 9,006,703	9,330,[illegible]5

See accompanying summary of significant accounting policies and notes to consolidated financial statements.

ND UBSIDIARIES
Unican Security Systems, Ltd.)

lan e Sheets

4 and 1973

Liabilities and Stockholders' Equity	1974	1973
Current liabilities:		
Notes payable to bank (note 5)	$ 2,867,314	2,611,132
Checks in transit	507,371	-
Current installments of long-term debt (note 5)	128,564	113,564
Accounts payable:		
Trade	1,325,657	1,348,656
Due to affiliated companies	131,679	559,801
Other	76,936	79,049
Total accounts payable	1,534,272	1,987,506
Accrued expenses	757,304	800,021
Total current liabilities	5,794,825	5,512,223
Long-term debt, excluding current installments (note 5)	852,681	1,577,260
Minority interest in preferred stock of consolidated subsidiary (note 6)	-	247,000
Stockholders' equity (note 7):		
5% convertible preferred stock of $100 par value per share; Authorized 13,500 shares; issued 13,364 shares	1,336,400	1,336,400
Common stock of $.10 par value per share; Authorized 8,000,000 shares; issued 5,658,181	565,818	565,818
Additional paid-in capital (note 6)	1,286,069	1,280,869
Accumulated deficit	(819,090)	(1,189,025)
	2,369,197	1,994,062
Less cost of 10,000 common and 180 preferred shares acquired in 1974 and held in the treasury	10,000	-
Total stockholders' equity	2,359,197	1,994,062
Commitments and contingent liabilities (notes 1, 3 and 11)		
	$ 9,006,703	9,330,545

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Consolidated Statement of Earnings and Accumulated Deficit

Years ended June 30, 1974 and 1973

	1974	19[illegible]
Continuing operations:		
Net sales	$ 16,879,271	14,084,089
Cost of sales	13,337,577	10,960,110
Gross profit	3,541,694	3,123,979
Expenses:		
Marketing	1,881,847	1,784,525
General and administrative	952,646	893,645
Total expenses	2,834,493	2,678,170
Operating profit	707,201	445,809
Interest expense	498,308	320,008
Other income, net	173,510	138,255
Net interest expense and other income	324,798	181,753
Earnings from continuing operations before Federal income taxes	382,403	264,056
Federal income taxes (note 9)	179,000	123,000
Earnings from continuing operations	203,403	141,056
Discontinued operations (note 4):		
Earnings from operations of discontinued subsidiary, less applicable income taxes of $62,000	-	69,749
Gain on sale of assets of discontinued subsidiary, less applicable income taxes of $250,000	-	270,977
Earnings from discontinued operations	-	340,726
Earnings before extraordinary items	203,403	481,782
Extraordinary items (note 8)	179,000	375,000
Net earnings	382,403	856,782
Accumulated deficit at beginning of period	(1,189,025)	(2,033,457)
Dividends declared on preferred stock of consolidated subsidiary	(12,468)	(12,350)
Accumulated deficit at end of period	$ (819,090)	(1,189,025)
Earnings per common share:		
Earnings from continuing operations	$ .04	.02
Earnings from discontinued operations	-	.06
Extraordinary items	.03	.07
Net earnings	$ .07	.15
Earnings per common share - assuming full dilution:		
Earnings from continuing operations	.03	.02
Earnings from discontinued operations	-	.06
Extraordinary item	.03	.06
Net earnings	$ .06	.14

The accompanying summary of significant accounting policies and notes to consolidated financial statements.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Consolidated Statement of Changes in Financial Position

Years ended June 30, 1974 and 1973

	1974	1973
Funds provided:		
Earnings from continuing operations before extraordinary items	$ 203,403	141,056
Items which do not use (provide) working capital:		
Depreciation and amortization	198,488	210,038
Gain on sale of property and equipment	(42,389)	(16,523)
Working capital provided by continuing operations, exclusive of extraordinary items	359,502	334,571
Earnings from discontinued operations	-	340,726
Items which do not use (provide) working capital:		
Depreciation and amortization	-	86,981
Gain on sale of property and equipment	-	(270,977)
Working capital provided by discontinued operations, exclusive of extraordinary items	-	156,730
Earnings from extraordinary items	179,000	375,000
Proceeds from sales of property and equipment	83,218	823,899
Decrease in non-current notes receivable	213,227	-
Other	-	4,000
Total funds provided	834,947	1,694,200
Funds used:		
Additions to property and equipment	311,393	471,472
Reductions in long-term debt	724,579	729,167
Increase in noncurrent notes receivable	-	213,227
Purchase of minority interest in preferred stock of consolidated subsidiary	241,800	-
Additional assessment for prior years taxes	67,760	-
Dividends paid on preferred stock of consolidated subsidiary	12,468	12,350
Purchase of treasury stock	10,000	-
Total funds used	1,368,000	1,426,216
Increase (decrease) in working capital	$ (533,053)	267,934
Changes in working capital:		
Increase (decrease) in current assets:		
Cash	(105,872)	(59,543)
Accounts and notes receivable	513,740	(345,044)
Due from affiliated companies	1,596,030	-
Inventories	(2,259,794)	1,027,649
Prepaid expenses	5,445	(6,082)
	(250,451)	616,980
Increase (decrease) in current liabilities:		
Note payable to bank	256,182	(13,818)
Cash overdraft	507,371	-
Current installments of long-term debt	15,000	(45,505)
Accounts payable	(453,234)	161,175
Accrued expenses	(42,717)	247,144
	282,602	348,996
Increase (decrease) in working capital	533,053	267,934

See accompanying summary of significant accounting policies.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Summary of Significant Accounting Policies

June 30, 1974 and 1973

Principles of consolidation:

The accompanying consolidated financial statements include the accounts of Ilco Corporation and its subsidiaries. The accounts of a foreign subsidiary have been converted to U.S. dollars at appropriate rates of exchange. Gains and losses from such conversions are recorded to earnings in the year incurred. All intercompany accounts and transactions have been eliminated in consolidation.

Major stockholder:

The Company's parent, Unican Security Systems, Ltd., owns approximately 92% of the outstanding shares of the Company's common stock and 83% of the convertible preferred stock.

Inventories:

The Company values its inventories at the lower of standard cost or estimated realizable value, with such standards approximating cost as determined by the first-in, first-out method.

The reserve for obsolescence is calculated by means of an aging formula applied to the year-end inventory. Included in the total reserve at June 30, 1973 was $217,000 as a provision for losses on discontinued products.

Depreciation and amortization policies:

Depreciation is computed using primarily the straight-line and sum of the years-digits methods at rates based upon the estimated useful lives of the assets as follows:

Buildings	5-33 years
Machinery and equipment	3-15 years

Product development expenses:

All research and product development costs are charged to operations as incurred.

Earnings per share:

The Company computes earnings per common share based on the weighted average number of shares outstanding during the year; net earnings are reduced for preferred dividend requirements. Earnings per common share-assuming full dilution are computed by assuming the conversion of all 5% convertible preferred stock at the beginning of the year.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements

June 30, 1974 and 1973

(1) Litigation

During 1970 and 1971 the Company was named in a number of class actions against manufacturers of lock hardware alleging violations of antitrust laws. These actions were brought in various jurisdictions and have been consolidated for pretrial proceedings in the United States District Court for the District of Connecticut. Legal counsel is unable to assess whether any of these actions have merit and the Company and counsel are unable to determine what damages, if any, may result from these actions.

In July 1973, the Company was named as one of three defendants in a suit initiated by a former officer and director of the Company alleging breach of contract. The plaintiff is seeking ordinary damages of approximately $243,000 and punitive damages of $500,000. Legal counsel is unable at this time to estimate the liability, if any, which may result from this action; however, counsel is of the opinion that punitive damages under the laws of the Commonwealth of Massachusetts are not normally recoverable.

(2) Transactions with affiliated companies

During May and June, 1974, the Company sold a substantial amount of inventory to a plant in Rocky Mount, North Carolina owned by a subsidiary of Unican Security Systems, Ltd., the Company's parent. The sale of such inventory amounting to $3.6 million was made at a price approximating cost and is reflected in the financial statements as a transfer from inventory to amounts due from affiliated companies. Of the total amount of the sale approximately $1.2 million remained outstanding at June 30, 1974. As part of the arrangement to affect payment with respect to the sale, the Company repaid all debt and accrued interest payable to its Parent amounting to $608,475 and acquired from an affiliated company 4,620 shares of preferred stock of a consolidated domestic subsidiary at a total cost of $225,000. The Company has agreed to repurchase all finished goods from the North Carolina company at cost plus a 5% handling charge when customer orders are received for such goods.

As of July 1, 1974 the Company has leased to the North Carolina company certain machinery and equipment. The parties to the transaction are presently negotiating the rental to be charged.

Included in the account due from affiliated companies at June 30, 1974 are advances of $425,000 which were repaid in July, 1974.

(3) Environmental action

The Company has been served with a writ for a suit in equity begun by the Director of the Division of Water Pollution Control of the Commonwealth of Massachusetts. The writ seeks the installation of anti-pollution devices to prevent unlawful pollution of the Nashua River. The Company has corrected the major pollution problems by transferring certain manufacturing operations to an affiliated company. With respect to the remaining problems the Company has received an extension through June 30, 1975 to comply with the pollution standards. In the opinion of management, the cost of corrective action to bring the Company to full compliance with the pollution control regulations will not exceed $50,000.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements, Continued

(4) Discontinued operations

On April 4, 1973 the Company sold all of its real estate and substantially all other equipment and automotive and plug and cam inventories owned by Independent Lock Company of Alabama, a wholly-owned domestic subsidiary. The Company received cash in the amount of $1,200,000, a non-interest bearing note of $72,893 due April 4, 1974 and a note for $225,000 due April 4, 1975 which bears interest at 9-1/2% for the last year only. The notes are carried in the Consolidated Balance Sheet for 1973 net of unamortized discount, based on an imputed interest rate of 7-1/2%. The manufacture of residential locks, formerly produced by this subsidiary has been transferred to the Company's main plant in Fitchburg, Massachusetts. The accompanying statement of earnings for 1973 reflects the discontinued operations separately along with the gain on the sale of the related assets. Net sales from the discontinued operations amounted to $3,400,000 for the nine months ended April 4, 1973.

(5) Note payable to bank and long-term debt

	Interest rate	1974	1973
Demand notes payable to bank:			
First National Bank of Boston	Prime rate plus 2-1/2%	$ 2,867,314	$ 2,611,13
Long-term debt:			
Massachusetts Business Development Corporation due in monthly installments through 1982	Prime rate plus 3% (minimum of 9-1/2%)	418,894	507,273
Exeter International due in monthly installments through 1980	5%	464,000	491,000
Unican Security Systems, Ltd. due January 27, 1982.	5%	-	264,000
Unican Security Systems, Ltd. due January 27, 1982	4-5/8%	-	300,000
Other maturing on various dates through 1978	Various	98,351	128,551
Total long-term debt		981,245	1,690,82
Less current installments of long-term debt		128,564	113,564
Long-term debt, excluding current installments		$ 852,681	1,577,260

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements, Continued

Installments of long-term debt payable in succeeding years to meet principal retirement provisions of long-term debt agreements presently in effect are as follows:

1976	$132,064
1977	128,564
1978	154,065
1979	178,914
1980 to 1982	259,074
	$852,681

The Company has pledged its trade receivables and inventory as security for the note payable to the First National Bank of Boston. As additional collateral the Company has also pledged all of its real and tangible properties, subject only to prior mortgages and liens in favor of Massachusetts Business Development Corporation securing its loan.

(6) Minority interest

During the year ended June 30, 1974 the Company purchased 4,020 shares of the preferred stock of a consolidated subsidiary, Kiel, Inc., from a subsidiary of Unican Security Systems, Ltd., the Company's parent, for an aggregate payment of $225,000.

During this same period the Company purchased the remaining 320 shares of such preferred issue from other stockholders for an aggregate payment of $16,800.

The resulting effects on the consolidated balance sheets are the elimination of the minority interest of $247,000 and an increase in the consolidated additional paid-in capital of $5,200, representing the excess of par value over the purchase price paid for such stock.

(7) Capital stock

The 5% convertible preferred stock is noncumulative and nonvoting. Each preferred share is convertible at any time into twenty-five common shares. Accordingly, 334,100 authorized and unissued common shares are reserved for such possible conversion. The preferred stock is entitled to $100 per share in either voluntary or involuntary liquidation and is redeemable at the option of the Company at any time for $100 per share.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements, Continued

(8) Extraordinary items

The extraordinary items include the following:

	1974	1973
Tax benefit arising from utilization of net operating loss carry forwards	$ 179,000	406,000
Loss on defaulted notes guaranteed by the Company (net of related Federal tax benefit of $29,000)	-	(31,000)
Total extraordinary items	$ 179,000	375,000

(9) Federal income taxes

The Company has continued to remain on a calendar year basis for tax purposes, although its fiscal year end for stockholder reporting purposes has been changed to June 30. As of December 31, 1973 the Company had available certain Federal income tax benefits which may be used to reduce taxable income or Federal taxes payable in future years. These benefits include net operating loss carryforwards amounting to approximately $1,153,000 expiring at various dates through 1978, foreign tax credits amounting to $147,000 expiring at various dates through 1978, and investment tax credits amounting to $27,000 expiring at various dates through 1980. The net operating loss carryforwards expire as follows:

December 31, 1974	$ 253,000
December 31, 1975	308,000
December 31, 1976	4,000
December 31, 1977	4,000
December 31, 1978	584,000
	$ 1,153,000

The Company accounts for certain transactions on a different basis for book and tax purposes which normally would have given rise to a deferred tax liability at June 30, 1974 of approximately $530,000. Such liability has not been recorded due to the availability of offsetting tax benefits referred to in the preceding paragraph.

During fiscal 1974 the Company paid $67,760 in assessments from the Internal Revenue Service representing adjustments of taxable income of prior years. Such assessments have caused a timing difference in the recognition of income for book and tax purposes. In future years the Company will recover the amounts paid as the timing differences reverse.

ILCO CORPORATION AND SUBSIDIARIES
(a majority-owned subsidiary of Unican Security Systems, Ltd.)

Notes to Consolidated Financial Statements, Continued

(10) Pension plan

The Company has two non-contributory retirement plans covering substantially all employees. The Company's policy is to fund accrued pension costs. As of June 30, 1973, the date of the most recent actuarial valuation the total of the pension fund assets was greater than the actuarially computed value of vested benefits. The pension expense for the year ended June 30, 1974 amounted to $88,000 ($102,000 in 1973).

(11) Lease commitments

The Company has entered into leasing arrangements for buildings and machinery and equipment with various lessors, including an affiliated company, Unican Security Systems Corp. Total rental expense for the current year under such leases is $239,553 ($164,282 in 1973) including $88,296 ($26,894 in 1973) paid to Unican Security Systems Corp. Minimum annual rental payments under such leases are as follows:

	Unican Security Systems Corp.	All others	Total
1975	$ 70,790	54,147	124,937
1976	70,790	26,988	97,778
1977	70,790	23,579	94,369
1978	26,214	1,528	27,742
1979	-	-	-
	$ 238,584	106,242	344,826

Leasing arrangements with Unican Security Systems Corp. specify that either party may terminate the above leases upon thirty days written notice. Such leases have been included in the above schedule for their entire five-year term, as it is the present intention of management to continue the leases in effect throughout this period.

ILCO CORPORATION AND SUBSIDIARIES

FINANCIAL STATEMENT

SIX MONTHS ENDED

DECEMBER 31, 1972

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INTER-COMPANY BALANCES

December 31, 1972

Amount	Unican Company	Included In
2,621.00	Home Hardware Division	Accounts Receivable
694.38	Unican Security Systems, Ltd.	Accounts Receivable
23.20	Simplex Security Systems, Inc.	Accounts Receivable
27,754.00	Security Hardware Division	Accounts Payable
42,928.82	Unican Security Systems, Ltd.	Accounts Payable
1,886.54	Unican Security Systems, Ltd., (Commission)	Accounts Payable
723.50	Unican Security Systems, Ltd., (Commission)	Accr'd Sal., Wages & Commission
2,113.43)	Home Hardware Division (Commission)	Accounts Payable
1,984.98)	Home Hardware Division (Commission)	Accr'd. Sal., Wages & Commission
34,810.35	Unican Security Systems, Ltd.	Accrued Interest Payable
300,000.00	Unican Security Systems, Ltd.	Notes Payable (L.T.)
482,000.00	Unican Security Systems, Ltd.	Notes Payable (L.T.)
18,987.48	Unican Security Systems, Ltd.	Interest Expense (L.T.) (Included Below

Interest Expense	Month	Y.T.D.
Long Term	$ 13,484	$ 82,047
Short Term	20,466	115,447
Total	$ 33,950	$ 197,494

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				FITCH		TELMA
				$	%	$
	JAN-JUNE 1971		NET SALES			2110 334
			MARKETING		0.7	12[illegible] 6.1
(19[illegible])		99,043	NET PROFIT	5235		(146726)
	JAN-JUNE 1971	AUD	NET SALES	5522261		2612472
			MARKETING	133470	11.1	140340 5.4
133,355)		106,978	NET PROFIT	(26375)		(467994)
	JAN-JUNE 1972	AUD	NET SALES	6933652		2796872
			MARKETING	795773	11.4	32941 1.3
255,457			NET PROFIT	755457		137617
	JULY-DEC 1972		NET SALES	6[illegible]		2213[illegible]
			MARKETING	[illegible]	13.1	37647 1.3
(41669 x (100,212)			NET PROFIT	(41669)		172725

35 DANIELS ST., FITCHBURG, MASSACHUSETTS 01420 (617) 343-3011 CABLE: ILCO

January 29, 1973

Operations for the six months ended December 31, 1972 resulted in net profit of $110,000 on net sales of $8,600,000. It is difficult to compare this with the same period in 1971 because we had audit and inventory adjustments that year since it was the close of our fiscal year.

However, there is no doubt that this year was more profitable. Sales were up $85,000 in spite of the discontinuance of several marginal product lines. G & A and Marketing Expenses were down by $50,000.

We have recognized in December a recovery of $47,000 from Atlantic Automotive for expenses we incurred during negotiations with them for the sale of Selma. There will possibly be an additional recovery before these negotiations are finalized.

We have also taken into income $40,000 which is part of a refund due on our Workmen's Compensation policy for the year ended June 30, 1972. The exact amount has not been finalized but it will be more than $40,000. We expect to finalize this the first part of February. Since this refund applies to a prior period, the income is shown as Other Income.

There were only eighteen shipping days in December for Fitchburg and consequently trade shipments were only $865,000. Inventory increased by almost $200,000. This should reverse itself in January since there are twenty-two shipping days.

The poor shipping month also caused a drop in trade receivables and cash squeeze in January but not of a serious nature.

These statements are late because of the end of the first six months of our fiscal year. We also continue to have 90 day payables which is a violation of our loan agreement. I know of no other violations.

Yours truly,

ILCO CORPORATION

G. R. Moore

G. R. Moore
Treasurer

GRM/er

ILCO CORPORATION AND SUBSIDIARIES

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ECCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF INCOME

ONE MONTH ENDED DECEMBER 31, 1972

	1971			1972	
	Budget	%	Amount	%	Amount
GROSS SALES:					
Trade					1,293,250
SALES DEDUCTIONS:					
Returned Goods-Trade					6,141
Sales Allowances					6,389
Cash Discounts					20,132
					32,662
NET SALES					1,260,588
Cost of Goods Sold					1,077,353
GROSS MARGIN					183,235
Expenses:					
Marketing					167,389
Direct Administrative					24,893
Corporate Administrative					31,700
Product Development					-
					223,982
INCOME FROM OPERATIONS					(40,747)
Other Income (Expense):					
Other Income					34,000
Other Expense					(1,241)
Interest Expense					32,759
					65,518
Net Profit Before Extraordinary Items					24,771
Extraordinary Items-Page 1A					-
Net Profit for the Period					24,771

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CONSOLIDATED STATEMENT OF INCOME
SIX MONTHS ENDED DECEMPER 31, 1972

	1971 Budget	%	1971 Amount	%	1972 Amount	%
GROSS SALES:						
Trade					$ 8,799,005	102.3
SALES DEDUCTIONS:						
Returned Goods-Trade					61,278	.8
Sales Allowances					21,530	.2
Cash Discounts					112,253	1.3
					195,061	2.3
NET SALES					8,603,944	100.0
Cost of Goods Sold					6,994,714	81.3
GROSS MARGIN					1,609,230	18.7
Expenses:						
Marketing					856,166	10.0
Direct Administrative					162,990	1.9
Corporate Administrative					374,884	4.3
Product Development					-	-
					1,394,040	16.2
INCOME FROM OPERATIONS					215,190	2.5
Other Income (Expense):						
Other Income					101,229	1.2
Other Expense					(21,270)	(.2)
Interest Expense					(197,220)	(2.3)
					(117,261)	(1.4)
Net Profit Before Extraordinary Items					97,929	1.1
Extraordinary Items-Page 2A					12,373	.2
Net Profit for the Period					$ 110,302	1.3

TSY

ILCO CORPORATION AND SUBSIDIARIES

EXTRAORDINARY PROFIT AND LOSS ITEMS

ONE MONTH ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
Additional Inventory Reserve	$		$ -	-
Vacation Period Costs			-	-
Provision for Contingency.			3,000	.2
Totals			$ 3,000	.2

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ILCO CORPORATION AND SUBSIDIARIES
EXTRAORDINARY PROFIT AND LOSS ITEMS
SIX MONTHS ENDED DECEMBER 31, 1972

	1971		1972	
	Amount	%	Amount	%
Additional Inventory Reserve	$		$ -	-
Gain on sale of Property			12,373	.2
Vacation Period Costs			-	-
Provision for Contingency			-	-
Total			$ 12,373	.2

JLCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

ASSETS

CURRENT ASSETS	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
Cash	$ 308,329	$ 154,371	$ 156,636
Accounts receivable-			
Trade	2,074,388	(315,159)	(507,192)
Other	89,835	47,693	10,721
	2,164,223	(267,466)	(496,471)
Less allowance for doubtful accounts	117,306	3,000	16,037
	2,046,917	(270,466)	(512,508)
Inventories:			
Raw materials	1,344,108	1,572	29,337
Work in process	3,257,433	233,352	338,122
Finished goods	1,535,388	(26,145)	(61,608)
	6,136,929	208,779	305,851
Less reserves:			
Shrinkage and obsolescence	994,287	14,323	174,311
Discontinued products	308,617	(38,352)	(178,766)
Valuation	-	-	-
	1,302,904	(24,029)	(4,455)
Net inventories	4,834,025	232,808	310,306
Prepaid expenses and other current assets	5,678	12,986	(56,743)
Total Current Assets	7,194,949	129,699	(122,309)
PROPERTY, PLANT & EQUIPMENT, AT COST			
Land	68,950	-	(16,250)
Buildings	1,517,404	19,337	30,597
Machinery and equipment	4,757,942	5,334	178,080
	6,344,296	24,671	192,427
Less accumulated amortization and depreciation	4,790,412	29,470	166,505
	1,553,884	(4,799)	25,922
OTHER ASSETS:			
Deferred vacation period costs	109,212	(18,201)	109,212
Deferred refinancing expenses (net of amortization)	9,064	(84)	(499)
Noncurrent receivables	-	-	(4,000)
Investment-M.B.D.C.	2,500	-	-
	120,776	(18,285)	104,713
	[illegible]	[illegible]	[illegible]

[illegible] Financial Statements [illegible] Security for [illegible]

ILCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT LIABILITIES			
Notes payable - Short Term: Bank	$ 2,740,050	$ 232,406	$ 115,100
Current maturity of Long-Term debt	149,800	1,100	(9,269)
Accounts payable	1,562,068	(40,136)	(143,105)
Accrued liabilities:			
Salaries, wages and com.	281,994	(98,121)	88,490
Taxes other than F.I.T.	174,605	(697)	(65,942)
Other	238,951	27,401	(1,033)
	695,550	(71,417)	21,515
Total Current Liabilities	5,147,468	121,953	(15,759)
LONG-TERM DEBT, Net of Current Maturities:			
Other	1,444,384	(12,350)	(80,042)
Unican	782,000	-	-
	2,226,384	(12,350)	(80,042)
RESERVE FOR CONTINGENCY	-	(3,000)	-
MINORITY INTEREST	247,000	-	-
STOCKHOLDER'S EQUITY			
Capital Stock: Preferred-5% conv.-$100 par value; 13,500 shares authorized and 13,364 shares issued	1,336,400	-	-
Common-10¢ par value 6,000,000 shares authorized and 5,658,181 shares issued	565,818	-	-
Paid in capital	1,280,869	-	-
Dividends paid on Preferred stock of subsidiary	(6,175)	-	(6,175)
Retained earnings	(1,923,155)	12	110,302
	1,253,757	12	104,127
	$ 8,874,609	$ 106,615	$ 8,326

ccounts Receivable, Inventory, and Fixed Assets pledged as security for notes o Bank and MBDC.

DECEMBER 31, 1972

	Consolidated	Increase (Decrease) Dec. 31, 1972	Increase (Decrease) June 30, 1972
Notes Payable - Short Term			
First National Bank-Boston	$ 2,740,050	$ 232,406	$ 115,110
Current Maturity-Long Term Debt			
J. Meyer	-	-	(13,250)
P. Lieber	10,200	-	-
J. B. Lawton	-	-	(3,119)
National Lead Company	14,000	-	-
Ransburg Electro-Coating	1,600	(400)	(2,400)
Massachusetts Business Development Corporation	100,000	-	-
Worcester County National Bank	6,000	-	500
Exeter International	18,000	1,500	9,000
	149,800	1,100	(9,269)
Long Term Debt-Net of Current Maturities			
P. Lieber	48,550	(850)	(5,100)
J. B. Lawton	-	-	(4,776)
National Lead Company	51,332	(1,167)	(8,168)
Massachusetts Business Development Corporation	850,002	(8,333)	(49,998)
Exeter International	482,000	(1,500)	(9,000)
Unican	482,000	-	-
Unican	300,000	-	-
Worcester County National Bank	12,500	(500)	(3,000)
	$ 2,226,384	$(12,350)	$(80,042)

ILCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED SOURCE AND USE OF FUNDS

	MONTH OF Dec. 31, 1972	YEAR TO DATE
FUNDS WERE OBTAINED FROM:		
Operations:		
Net profit before extraordinary items	$(2,988)	$ 97,929
Extraordinary items	3,000	12,373
Depreciation of Plant Assets	29,470	176,820
Sale of Fixed Assets	-	17,626
Reduction of Noncurrent Receivables	-	4,000
Reserve for Contingency	(3,000)	-
	26,482	308,748
D WERE USED FOR:		
Purchase of Fixed Assets	24,671	220,368
Deferred Refinancing Expense	(84)	(499)
Decrease in Long-Term Debt	12,350	80,042
Payment of Preferred Stock Dividend	-	6,175
Deferred Vacation Period Costs	(18,201)	109,212
	18,736	415,298
Increase (Decrease) in Working Capital	7,746	(106,550)
WORKING CAPITAL AT THE BEGINNING	2,039,735	2,154,031
WORKING CAPITAL - DECEMBER 31, 1972	$ 2,047,481	$ 2,047,481

O P E R A T I O N A L A U D I T

ANALYSIS OF CONSOLIDATED INVENTORY TRANSACTIONS

ONE MONTH ENDED DECEMBER 31, 1972

	FITCHBURG HARDWARE DIVISION	INDEPENDENT LOCK COMPANY OF ALABAMA	ORANGE FOUNDRY INC.	ILCOROP S. A.	CONSOLIDATED
BEGINNING INVENTORY	$ 3,660,254	$ 834,420	$ 47,573	$ 58,971	$ 4,601,218
ADDITIONS TO INVENTORY					
Direct Material	339,376	108,239	18,174	-	465,789
Direct Labor	116,885	96,683	3,660	-	317,228
Direct Overhead	349,818	178,359	21,042	-	549,219
Total Direct Costs	806,079	383,281	42,876	-	1,232,236
Intercompany Purchases	55,724	22,535	-	78	78,337
Intercompany (Transfers)	(22,613)	(19,722)	(36,002)	-	(78,337)
Net Intercompany	33,111	2,813	(36,002)	78	-
Valuation Adjustment	-	-	-	-	-
Net Additions to Inventory	839,190	386,094	6,874	78	1,232,236
INVENTORY TRANSFERS (OTHER THAN STANDARD COST OF SALES)					
Spoilage	13,492	8,511	-	-	22,003
Provision for Shrinkage	10,000	18,000	-	-	28,000
Provision for Obsolescence	3,000	1,000	-	-	4,000
Physical Inventory Adjustments	-	-	3,975	-	3,975
Other	5,110	-	575	119	5,804
Net Transfers (Other than Standard Cost of Sales)	31,602	27,511	4,550	119	63,782
AVAILABLE FOR SALE	4,467,842	1,193,003	49,897	58,930	5,769,672
STANDARD COST OF SALES - TRADE	622,550	315,067	151	(2,121)	935,647
ENDING INVENTORY	3,845,292	877,936	49,746	61,051	4,834,025
INVENTORY INCREASE (DECREASE)	$ 185,038	$ 43,516	$ 2,173	$ 2,080	$ 232,807

ILCO CORPORATION AND SUBSIDIARIES

ANALYSIS OF CONSOLIDATED INVENTORY TRANSACTIONS

SIX MONTHS ENDED DECEMBER 31, 1972

	FITCHBURG HARDWARE DIVISION	INDEPENDENT LOCK COMPANY OF ALABAMA	ORANGE FOUNDRY INC.	ILCOROP S. A.	CONSOLIDATED
BEGINNING INVENTORY	$ 3,454,107	$ 961,910	$ 25,387	$ 82,316	$ 4,523,720
ADDITIONS TO INVENTORY					
Direct Material	1,788,008	677,717	124,150	-	2,589,875
Direct Labor	677,735	541,667	16,121	-	1,235,523
Direct Overhead	2,002,802	995,179	92,694	-	3,090,675
Total Direct Costs	4,468,545	2,214,563	232,965	-	6,916,073
Intercompany Purchases	335,982	137,177	-	16,990	490,149
Intercompany (Transfers)	(154,167)	(130,573)	(205,409)	-	(490,149)
Net Intercompany	181,815	6,604	(205,409)	16,990	-
Valuation Adjustment	135,284	-	-	-	135,284
Net Additions to Inventory	4,785,644	2,221,167	27,556	16,990	7,051,357
INVENTORY TRANSFERS (OTHER THAN STANDARD COST OF SALES)					
Spoilage	56,376	51,285	-	-	107,661
Provision for Shrinkage	60,000	108,000	-	-	168,000
Provision for Obsolescence	18,000	6,000	-	-	24,000
Physical Inventory Adjustments	-	-	(728)	-	(728)
Other	33,039	1,499	815	3,353	38,706
Net Transfers (Other than Standard Cost of Sales)	167,415	166,784	87	3,353	337,639
AVAILABLE FOR SALE	8,072,336	3,016,293	52,856	95,953	11,237,438
STANDARD COST OF SALES - TRADE	4,227,044	2,138,357	3,110	34,902	6,403,413
ENDING INVENTORY	3,845,292	877,936	49,746	61,051	4,834,025
INVENTORY INCREASE (DECREASE)	$ 391,185	$(83,974)	$ 24,359	$(21,265)	$ 310,305

ILCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED GROSS MARGIN ANALYSIS

ONE MONTH ENDED DECEMBER 31, 1972

	FITCHBURG HARDWARE DIVISION	INDEPENDENT LOCK COMPANY OF ALABAMA	ORANGE FOUNDRY INC.	ILCOROP S. A.	CONSOLIDATED
NET SALES - TRADE	$ 864,144	$ 398,123	$ 53	$(2,828)	$ 1,259,492
COST OF SALES-TRADE					
STANDARD					
Direct Material	253,930	122,443	83	(2,121)	374,335
Direct Labor	90,247	71,444	10	-	161,701
Direct Overhead	278,073	121,180	58	-	399,311
Total Standard	622,250	315,067	151	(2,121)	935,347
VARIANCES					
Material Price	(2,139)	5,260	-	-	3,121
Labor	24,226	14,136	846	-	39,208
Overhead Performance	15,526	(25,587)	16,397	-	6,336
Overhead Volume	69,806	5,488	(4,327)	-	70,967
Total Variances	107,419	(703)	12,916	-	119,632
VACATION PERIOD ADJUSTMENT	18,201	-	-	-	18,201
PHYSICAL INVENTORY ADJUSTMENT	-	-	3,975	-	3,975
VALUATION ADJUSTMENT	-	-	-	-	-
TOTAL COST OF SALES	748,170	314,364	17,042	(2,121)	1,077,455
GROSS MARGIN - TRADE	115,974	83,759	(16,989)	(707)	182,037
GROSS MARGIN PERCENTAGE	13.4	21.0	-	(25.0)	14.5

ILCO CORPORATION AND SUBSIDIARIES

CONSOLIDATED GROSS MARGIN ANALYSIS

SIX MONTHS ENDED DECEMBER 31, 1972

	FITCHBURG HARDWARE DIVISION	INDEPENDENT LOCK COMPANY OF ALABAMA	ORANGE FOUNDRY INC.	ILCOROP S. A.	CONSOLIDATED
NET SALES - TRADE	$ 5,893,468	$ 2,659,942	$ 3,997	$ 46,536	$ 8,603,943
COST OF SALES-TRADE					
STANDARD					
Direct Material	1,737,135	836,055	2,124	34,902	2,610,216
Direct Labor	611,951	479,626	146	-	1,091,723
Direct Overhead	1,877,958	822,676	840	-	2,701,474
Total Standard	4,227,044	2,138,357	3,110	34,902	6,403,413
VARIANCES					
Material Price	(196)	6,651	-	-	5,855
Labor	163,443	76,097	1,521	-	241,061
Overhead Performance	89,709	(103,520)	34,801	-	20,990
Overhead Volume	479,906	80,270	8,442	-	568,618
Total Variances	732,862	58,898	44,764	-	836,524
VACATION PERIOD ADJUSTMENT	(109,212)	-	-	-	(109,212)
PHYSICAL INVENTORY ADJUSTMENT	-	-	(728)	-	(728)
VALUATION ADJUSTMENT	(135,284)	-	-	-	(135,284)
TOTAL COST OF SALES	4,715,410	2,197,255	47,146	34,902	6,904,713
GROSS MARGIN - TRADE	1,178,058	462,687	(43,149)	11,634	1,609,230
GROSS MARGIN PERCENTAGE	20.0	17.4	-	25.0	18.7

STATEMENT OF INCOME - FITCHBURG HARDWARE DIVISION

ONE MONTH ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
GROSS SALES:				
Trade			$ 890,760	100.0
Intercompany			26,606	5.0
			917,366	103.0
SALES DEDUCTIONS:				
Returned Goods-Trade			3,162	.4
Sales Allowance			6,281	.7
Cash Discounts			17,173	1.9
			26,616	3.0
NET SALES			890,750	100.0
COST OF GOODS SOLD:				
Trade			748,170	84.0
Intercompany			22,613	2.5
Intercompany Profit Paid			9,834	1.1
			780,617	87.6
GROSS MARGIN:				
Trade			115,974	13.0
Intercompany			(5,841)	(.6)
			110,133	12.4
Expenses:				
Marketing			133,215	15.0
Direct Administrative			14,557	1.6
Corporate Administrative			13,374	1.5
Product Development			-	-
			161,146	18.1
INCOME FROM OPERATIONS			(51,013)	(5.7)
Other Income (Expense):				
Other Income			52,710	5.9
Other Expense			(26,342)	(2.9)
			26,368	3.0
Net Profit Before Extra-ordinary Items			(24,645)	(2.7)
Extraordinary Items			10.000	1.1
Net Profit for the Period			$(14,645)	(1.6)

ILCO CORPORATION

STATEMENT OF INCOME - FITCHBURG HARDWARE DIVISION

SIX MONTHS ENDED DECEMBER 31, 1972

	1971		1972	
	Amount	%	Amount	%
GROSS SALES:				
Trade			$ 6,043,512	99.6
Intercompany			176,906	2.9
			6,220,418	102.5
SALES DEDUCTIONS:				
Returned Goods-Trade			32,447	.6
Sales Allowance			20,087	.3
Cash Discounts			97,510	1.6
			150,044	2.5
NET SALES			6,070,374	100.0
COST OF GOODS SOLD:				
Trade			4,715,410	77.7
Intercompany			154,167	2.5
Intercompany Profit Paid			59,291	1.0
			4,928,868	81.2
GROSS MARGIN:				
Trade			1,178;058	19.4
Intercompany			(36,552)	(.6)
			1,141,506	18.8
Expenses:				
Marketing			794,518	13.1
Direct Administrative			88,029	1.4
Corporate Administrative			248,315	4.1
Product Development			-	-
			1,130,862	18.6
INCOME FROM OPERATIONS			10,644	.2
Other Income (Expense):				
Other Income			98,672	1.6
Other Expense			(156.491)	(2.6)
			(57,819)	(1.0)
Net Profit Before Extra-ordinary Items			(47,175)	(.8)
Extraordinary Items			12,373	.2
Net Profit for the Period			$(34,802)	(.6)

ILCO CORPORATION

BALANCE SHEET - FITCHBURG HARDWARE DIVISION

ASSETS

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT ASSETS			
Cash	$ 304,143	$ 179,397	$ 145,666
Accounts receivable			
Trade	2,195,163	(297,938)	(513,831)
Other	362,256	59,100	(137,341)
	2,557,419	(238,838)	(651,172)
Less allowance for doubtful accounts	116,673	3,000	16,037
	2,440,746	(241,838)	(667,209)
Inventories:			
Raw materials	1,073,841	89,436	301,935
Work in process	2,468,492	93,343	16,813
Finished goods	1,254,150	(12,575)	(17,823)
	4,796,483	170,204	300,925
Less reserves:			
Shrinkage and obsolescence	648,725	13,000	77,988
Discontinued products	302,466	(27,834)	(168,249)
Valuation	-	-	-
	951,191	(14,834)	(90,261)
Net inventories	3,845,292	185,038	391,186
Prepaid expenses and other current assets	7,776	17,002	(52,719)
Total Current Assets	6,597,957	139,599	(183,076)
PROPERTY, PLANT & EQUIPMENT, AT COST			
Land	55,150	-	(16,250)
Buildings	739,844	17,055	5,363
Machinery and equipment	3,214,867	3,576	100,887
	4,009,861	20,631	90,000
Less accumulated amortization and depreciation	3,170,538	15,195	80,856
	839,323	5,436	9,144
INVESTMENT IN SUBSIDIARIES	1,451,985	-	-
OTHER ASSETS			
Deferred vacation period costs	109,212	(18,201)	109,212
Deferred refinancing expenses (net of amortization)	9,064	(84)	(499)
Noncurrent receivables	-	-	(4,000)
Investment - M.B.D.C.	7,500	-	-
	125,776	(18,285)	104,713
	$ 9,015,041	$ 139,750	$(69,219)

(1) Trade Receivable, Inventory, and Fixed Assets pledged as security for Note

ILCO CORPORATION

BALANCE SHEET - FITCHBURG HARDWARE DIVISION

'LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT LIABILITIES			
Notes Payable - Short Term:			
Bank	$ 2,740,050	$ 232,406	$ 115,100
Current maturity of Long-Term Debt	148,200	1,500	(6,869)
Accounts payable	1,175,370	(21,248)	(86,456)
Accrued liabilities:			
Salaries, wages and com.	209,922	(76,077)	56,732
Taxes other than F.I.T.	147,333	6,287	(39,862)
Other	162,034	20,877	6,981
	519,289	(48,913)	23,851
Total Current Liabilities	4,582,909	163,745	45,626
LONG-TERM DEBT, Net of Current Maturities:			
Other	1,444,384	(12,350)	(80,043)
Unican	782,000	-	-
	2,226,384	(12,350)	(80,043)
RESERVE FOR CONTINGENCY	-	(10,000)	-
STOCKHOLDER'S EQUITY			
Capital Stock: Preferred-5% conv.-$100 par value; 13,500 shares authorized and 13,364 shares issued	1,336,400	-	-
Common-10¢ par value 6,000,000 shares authorized and 5,658,181 shares issued	565,818	-	-
Paid in capital	1,280,869	-	-
Retained earnings	(977,339)	(14,645)	(34,802)
	2,205,748	(14,645)	(34,802)
	$ 9,015,041	$ 126,750	$(69,219)

Accounts Receivable, Inventory, and Fixed Assets pledged as security for note to Bank and M.B.D.C.

KEIL LOCK COMPANY, INC.

BALANCE SHEET

ASSETS

	Dec. 31, 1972	Increase (Decrease) June 30, 1972
CURRENT ASSETS		
Cash	$ -	$ -
Accounts receivable	1,560,437	(6,175)
Inventories:		
Raw materials	-	-
Work in process	-	-
Finished goods	-	-
	-	-
Less reserves:		
Shrinkage and obsolescence	-	-
Discontinued products	-	-
	-	-
Net inventories	-	-
Prepaid expenses and other current assets	-	-
Total Current Assets	1,560,437	(6,175)
PROPERTY, PLANT & EQUIPMENT, AT COST		
Land	-	-
Buildings	-	-
Machinery and equipment	-	-
	-	-
Less accumulated amortization and depreciation	-	-
	-	-
INVESTMENT IN SUBSIDIARIES	110,000	-
	$ 1,670,437	$(6,175)

KEIL LOCK COMPANY, INC.

BALANCE SHEET

LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) June 30, 1972
CURRENT LIABILITIES		
Accounts payable	$ -	$ -
Accrued liabilities:		
Salaries, wages and com.	-	-
Taxes other than Federal income taxes	-	-
Other	1,172	-
	1,172	-
Total Current Liabilities	1,172	-
STOCKHOLDER'S EQUITY		
Common stock, no par value, stated value $5 per share- authorized 20,000 shares; issued 12,000 shares	60,000	-
Preferred stock, 5% cumulative, $50 par value - authorized 6,000 shares; issued 5,000 shares (less 60 shares held in Treasury)	250,000	-
Capital in excess of stated value of capital stock	36,000	-
Retained earnings	1,326,165	(6,175)
	1,672,165	(6,175)
Less Treasury stock at cost	2,900	-
	1,669,265	(6,175)
	$ 1,670,437	$(6,175)

STATEMENT OF INCOME

ONE MONTH ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
GROSS SALES:				
Trade			$ 404,135	95.9
Intercompany			23,203	5.5
			427,338	101.4
SALES DEDUCTIONS:				
Returned Goods-Trade			2,979	.7
Sales Allowances			58	-
Cash Discounts			2,975	.7
			6,012	1.4
NET SALES			421,326	100.0
COST OF GOODS SOLD:				
Trade			314,365	74.6
Intercompany			19,722	4.7
Intercompany Profit Paid			3,977	.9
			338,064	80.2
GROSS MARGIN:				
Trade			83,758	19.9
Intercompany			(496)	(.1)
			83,262	19.8
Expenses:				
Marketing			6,174	1.5
Direct Administrative			6,735	1.6
Corporate Administrative			18,982	4.5
Product Development			-	-
			31,891	7.6
INCOME FROM OPERATIONS			51,371	12.2
Other Income (Expense):				
Other Income			-	-
Other Expense			(9,523)	(2.3)
			(9,523)	(2.3)
Net Profit before Extra-ordinary Items			41,848	9.9
Extraordinary Items			(7.000)	(1.6)
Net Profit for the Period			$ 34,848	8.3

INDEPENDENT LOCK COMPANY OF ALABAMA

STATEMENT OF INCOME

SIX MONTHS ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
GROSS SALES:				
Trade			$ 2,704,810	96.1
Intercompany			153,616	5.5
			2,858,426	101.6
SALES DEDUCTIONS:				
Returned Goods-Trade			28,831	1.0
Sales Allowances			1,293	.1
Cash Discounts			14,744	.5
			44,868	1.6
NET SALES			2,813,558	100.0
COST OF GOODS SOLD:				
Trade			2,197,256	78.1
Intercompany			130,573	4.6
Intercompany Profit Paid			24,208	.9
			2,352,037	83.6
GROSS MARGIN:				
Trade			462,686	16.4
Intercompany			(1,165)	-
			461,521	16.4
Expenses:				
Marketing			37,647	1.3
Direct Administrative			65,471	2.3
Corporate Administrative			114,321	4.1
Product Development			-	-
			217,439	7.7
INCOME FROM OPERATIONS			244,082	8.7
Other Income (Expense):				
Other Income			2,176	.1
Other Expense			(55.715)	(2.0)
			(53.539)	(1.9)
Net Profit for the Period			$ 190,543	6.8

INDEPENDENT LOCK COMPANY OF ALABAMA

BALANCE SHEET

ASSETS

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT ASSETS			
Cash	$ 40	$(23,990)	$(1,630)
Accounts receivable	-	-	-
Inventories:			
Raw materials	254,969	(64,120)	(272,279)
Work in process	755,568	113,508	295,532
Finished goods	189,110	2,611	(3,744)
	1,199,647	51,999	19,509
Less reserves:			
Shrinkage and obsolescence	315,560	19,000	114,000
Discontinued products	6,151	(10,517)	(10,517)
	321,711	8,483	103,483
Net inventories	877,936	43,516	(83,974)
Prepaid expenses and other current assets	(1,961)	(2,765)	(2,773)
Total Current Assets	876,015	16,761	(88,377)
PROPERTY, PLANT & EQUIPMENT, AT COST			
Land	10,000	-	-
Buildings	565,209	-	-
Machinery and equipment	1,405,272	7,437	41,579
	1,980,481	7,437	41,579
Less accumulated amortization and depreciation	1,420,203	13,000	78,000
	560,278	(5,563)	(36,421)
	$ 1,436,293	$ 11,198	$(124,798)

INDEPENDENT LOCK COMPANY OF ALABAMA

BALANCE SHEET

LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
URRENT LIABILITIES			
Current Maturity of Long-Term Debt:	$ 1,600	$(400)	$(2,400)
Accounts payable	2,163,303	(8,388)	(309,644)
Accrued liabilities:			
Salaries, wages and com.	66,148	(23,379)	27,430
Taxes other than Federal income taxes	23,462	(4,970)	(22,525)
Other	68,632	6,487	(8,202)
	158,242	(21,862)	(3,297)
Total Current Liabilities	2,323,145	(30,650)	(315,341)
ONG-TERM DEBT, Net of Current Maturities	-	-	-
roduction Loss due to Inventory	-	7,000	-
TOCKHOLDER'S EQUITY			
Common stock, stated value $100 - authorized 1,000 shares; issued and outstanding 500 shares	50,000	-	-
Capital in excess of stated value of common stock	94,916	-	-
Retained earnings	(1,031,768)	34,848	190,543
	(886,852)	34,848	190,543
	$ 1,436,293	$ 11,198	$(124,798)

[redacted]

STATEMENT OF INCOME

ONE MONTH ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
GROSS SALES:				
Trade			$ 203	.5
Intercompany			42,355	99.9
			42,558	100.4
SALES DEDUCTIONS			150	.4
NET SALES			42,408	100.0
COST OF GOODS SOLD:				
Trade			17,041	40.2
Intercompany			36,002	84.9
			53,043	125.1
GROSS MARGIN:				
Trade			(16,988)	(40.1)
Intercompany			6,353	15.0
			(. 10,635)	(25.1)
Expenses:				
Direct Administrative			2,091	4.9
Corporate Administrative			2,034	4.8
Product Development			-	-
			4,125	9.7
INCOME FROM OPERATIONS			(14,760)	(34.8)
Other Income (Expense):				
Other Income			319	.7
Other Expense			(1,027)	(2.4)
			(708)	(1.7)
Net Profit for the Period			$(15,468)	(36.5)

[redacted]

ORANGE FOUNDRY, INC.

STATEMENT OF INCOME

SIX MONTHS ENDED DECEMBER 31, 1972

	1971		1972	
	Amount	%	Amount	%
GROSS SALES:				
Trade			$ 4,147	1.7
Intercompany			241,657	98.4
			245,804	100.1
SALES DEDUCTIONS:			150	.1
ET SALES			245,654	100.0
OST OF GOODS SOLD:				
Trade			47,145	19.4
Intercompany			205,409	83.6
			252,554	103.0
GROSS MARGIN:				
Trade			(43,148)	(17.8)
Intercompany			36,248	14.8
			(6,900)	(3.0)
xpenses:				
Direct Administrative			9,489	3.9
Corporate Administrative			12,249	5.0
Product Development			-	-
			21,738	8.9
NCOME FROM OPERATIONS			(28,638)	(11.9)
ther Income (Expense):				
Other Income			381	.2
Other Expense			(6,285)	(2.6)
			(5,904)	(2.4)
et profit for the Period			$(34,542)	(14.3)

ORANGE FOUNDRY, INC.

BALANCE SHEET

ASSETS

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT ASSETS			
sh	$ 25	$ -	$ 5
Accounts receivable	3,045	-	(72,315)
Inventories:			
Raw materials	15,299	(23,743)	(318)
Work in process	33,371	26,499	25,775
Finished goods	1,076	(583)	(1,097)
	49,746	2,173	24,360
Prepaid expenses and other current assets	(567)	(1,250)	(1,250)
Total Current Assets	52,249	923	(49,200)
PROPERTY, PLANT & EQUIPMENT, COST			
Land	3,800	-	-
ildings	212,352	2,284	25,235
chinery and equipment	121,539	(5,680)	35,614
	337,691	(3,396)	60,849
ss accumulated amortization and depreciation	183,877	1,200	7,200
	153,814	(4,596)	53,649
	$ 206,063	$(3,673)	$ 4,449

ORANGE FOUNDRY, INC.

BALANCE SHEET

LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT LIABILITIES			
Current maturity of long-term debt	$ -	$ -	$ -
Accounts payable	117,725	12,439	38,029
Accrued liabilities:			
Salaries, wages and com.	5,924	1,335	4,329
Taxes other than Federal income taxes	3,811	(2,014)	(3,554)
Other	262	35	187
	9,997	(644)	962
Total Current Liabilities	127,722	11,795	38,991
STOCKHOLDER'S EQUITY			
Common stock $100 par value-authorized, issued, and outstanding 500 shares	50,000	-	-
Retained earnings	28,341	(15,468)	(34,542)
	78,341	(15,468)	(34,542)
	$ 206,063	$(3,673)	$ 4,449

ILCOROP, S. A.

STATEMENT OF INCOME

ONE MONTH ENDED DECEMBER 31, 1972

	1971 Amount	1971 %	1972 Amount	1972 %
NET SALES			$(2,828)	(100.0)
COST OF GOODS SOLD:				
At inventory value			(2,121)	(75.0)
Intercompany profit eliminated			16	.6
Total			(2,105)	(74.4)
GROSS MARGIN			(723)	(25.6)
Marketing Expense			4,000	141.4
INCOME FROM OPERATIONS			(4,723)	(167.0)
Other Income (Expense):				
Other Income			-	-
Other Expense			-	-
			-	-
Income before provision for Swiss income taxes			$(4,723)	(167.0)

ILCOROP, S. A.

STATEMENT OF INCOME

SIX MONTHS ENDED DECEMBER 31, 1972

	1971		1972	
	Amount	%	Amount	%
NET SALES			$ 46,536	100.0
COST OF GOODS SOLD:				
At inventory value			34,902	75.0
Intercompany profit eliminated			(1,469)	(3.2)
Total			33,433	71.8
GROSS MARGIN			13,103	28.2
Marketing Expense			24,000	51.6
INCOME FROM OPERATIONS			(10,897)	(23.4)
Other Income (Expense):				
Other Income			-	-
Other Expense			-	-
			-	-
Income before provision for Swiss income taxes			$(10,897)	(23.4)

ILCOROP, S. A.

BALANCE SHEET

LIABILITIES AND STOCKHOLDER'S EQUITY

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT LIABILITIES			
Accounts payable	$ 88,909	$(6,447)	$(35,060)
Accrued liabilities:			
Other	6,849	-	-
Total Current Liabilities	95,758	(6,447)	(35,060)
STOCKHOLDER'S EQUITY			
Common stock, par value 1 Swiss Franc-authorized issued and outstanding 200 shares	46,189	-	-
Retained earnings	(49,949)	(4,723)	(10,897)
	(3,760)	(4,723)	(10,897)
	$ 91,998	$(11,170)	$(45,957)

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ILCOROP, S. A.

BALANCE SHEET

ASSETS

	Dec. 31, 1972	Increase (Decrease) Nov. 30, 1972	Increase (Decrease) June 30, 1972
CURRENT ASSETS			
Cash	$ 4,121	$(1,035)	$(7,405)
Accounts receivable	26,560	(12,140)	(16,837)
Less allowance for doubtful accounts	633	-	-
	25,927	(12,140)	(16,837)
Inventories:			
Finished goods	91,053	(15,597)	(38,942)
Less reserve for shrinkage and obsolescence	30,002	(17,677)	(17,677)
	61,051	2,080	(21,265)
Prepaid expenses and other current assets	430	-	-
Total Current Assets	91,529	(11,095)	(45,507)
PROPERTY, PLANT & EQUIPMENT, COST			
hinery and equipment	16,263	-	-
Less accumulated amortization and depreciation	15,794	75	450
	469	(75)	(450)
	$ 91,998	$(11,170)	$(45,957)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

COPY

IN RE:	MDL DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	(ALL CASES)
	June 4, 1976

EXXON CORPORATION'S MEMORANDUM IN OPPOSITION TO APPROVAL OF THE 80%-20% ALLOCATION IN THE EMHART COPPORATION SETTLEMENT OFFER

Preliminary Statement

Pursuant to leave of Court, this memorandum is submitted by Exxon Corporation, et al. ("Objectors")[1/] in opposition to the 80%-20% plan of allocation between the public entity and private builder-owner classes contained in the Emhart Corporation ("Emhart") settlement proposal sponsored by Co-Counsel for the Class Representatives. Because of the inherent and blatant conflict of interest by counsel representing both the national government class in the City of Philadelphia action and the private builder-owner class in the Amherst Leasing Corp. action, in conjunction with the lack of evidentiary support for the 80%-20% plan of allocation of the settlement fund, Objectors respectfully submit that it would be clearly reversible error for this Court to approve the settlement proposal at present containing this arbitrary allocation.

As stated at the June 2, 1976, hearing, Objectors do not oppose approval of the $7.5 million settlement with

1/ Objectors include eight other firms listed in the Notice of Appearance filed on May 13, 1976 (item 463 on the docket sheets).

defendant Emhart.[1/] Moreover, while part of the settlement agreement, it was evident from the supporting argument of counsel for Emhart that the 80%-20% allocation is not an inviolate part of the settlement agreement from Emhart's point of view.

Finally, the 80%-20% allocation, rather than being grounded on a sound evidentiary basis, is a result of negotiation of plaintiffs' counsel. However, counsel purportedly representing the private builder-owner class had a conflict of interest disabling him from representing that class in negotiating the plan of allocation.

The Framework In Which This Dispute Arises

Over the signature of the Clerk of this Court, an undated "Notice Of Class Action And Partial Settlement With Respect To Litigation Involving Finished Hardware" was mailed to both public and private builder-owners of structures having master key locks. This deceptively simplistic notice describes in Paragraph C the following proposed allocation of the settlement fund:

> "The settlement agreement provides that the fund shall be allocated among the classes as follows:
>
> The state-wide and national government classes: eighty (80%) percent.
>
> The private builder-owner class: twenty (20%) percent."

No basis for that 80%-20% allocation "formula" was provided in the notice to the class.

Significantly, in the Memorandum In Support Of Settlement With Emhart Corporation submitted on May 15, 1976, by both

---

1/ Indeed, there is apparently no objection to the $7.5 million total settlement with Emhart.

Messrs. Freeman, counsel for certain public bodies, and Montague, counsel for both certain public bodies and private builder-owners, the following statement as to the origin of this arbitrary "formula" is set forth:

> "There were several meetings and discussions among plaintiffs' counsel prior to complete acceptance and filing of the settlement agreement . . . . These discussions [among plaintiffs' counsel] led to the agreement on the amount of the settlement, the allocation between public and private classes, and distribution among the states . . . ." (Page 5; emphasis supplied.)

Hence, the arbitrary 80%-20% allocation, by their own admissions, was the result of an agreement between counsel representing the various classes, and the only person to speak for the private builder-owner class concededly also represented public bodies.[1/]

The Lack Of Evidentiary Support For The Arbitrary 80%-20% Allocation Provided By Emhart

Significantly, the June 26, 1975, settlement agreement, signed by counsel for public body plaintiffs, counsel for public and private body plaintiffs, and counsel for defendant Emhart, contains no basis or explanation for the 80%-20% allocation. To the contrary, Paragraph II.B merely provides:

> "The Fund shall be apportioned as follows: Eighty (80) percent to plaintiffs and class members in those actions brought on behalf of public entities and twenty (20) percent to plaintiffs and class members in those actions brought on behalf of private entities."

Not only did counsel for Emhart not comment at the June 2, 1976, hearing on the validity of the allocation plan

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1/ As long as one counsel represents both public and private bodies whose interests are fully at odds on this matter, this conflict will persist even if other counsel representing only private builder-owners are appointed to any distribution or settlement committee. Likewise, the settlement will remain tainted so long as the 80%-20% allocation remains part and parcel thereof.

agreed on by plaintiffs' counsel, but the entire thrust of Emhart's thorough Memorandum In Support Of Proposed Settlement Of Emhart Corporation submitted on May 27, 1976, is directed to justifying approval of the $7.5 million settlement as fair and adequate, an issue to which Objectors take no dispute. Only in the last few pages of that Memorandum in response to certain objections is any mention made of the allocation. After making brief reference to the "records of Emhart Corporation" (page 26), the defendant then resorts to a footnote referring to the explanation of the 80%-20% allocation set forth in plaintiffs' memorandum.

Further, in refuting the reference by counsel Seymour and Tydings to certain statistics on housing starts and new construction, the statement in Emhart's memorandum is made that these general categories are "insufficient as a means of tracing its products to end users". However, as will be shown below, the "Emhart statistics" are themselves too broad to provide an adequate means of tracing its products to end users, even if the Emhart statistics provided the proper data for allocating the fund between classes. Additionally, brief reference is made to the Dykeman or Price Waterhouse study. Again, however, as will be pointed out below, that study is also wholly inadequate as a basis for even "corroborating" the so-called Emhart statistics as plaintiffs' counsel apparently now concede.

In summary, Emhart concludes its brief comment on this issue with the statement that "the plan of allocation has been approved by all representative counsel [i.e., plaintiffs counsel] and is based on the most relevant economic data available . . . ." (Emphasis supplied.) Hence, there is no supportin statement by Emhart that the data before this Court is accurate

for purposes of supporting the arbitrary allocation arrived at by private negotiations between plaintiffs' counsel.

Counsel For Plaintiffs Have Not Provided Adequate Evidentiary Support For The 80%-20% Allocation

In reply at the June 2, 1976, hearing, plaintiff's counsel emphasized that no public body had objected to the proposed plan of allocation; this in and of itself demonstrates that the 80%-20% plan of allocation is overweighted in favor of public bodies, and unfairly prejudices private builder-owners. In fact, were co-counsel for plaintiffs confident in the data they rely on purportedly supporting the plan of allocation, they would fear little from a settlement plan in which there was no allocation prior to the filing of claims. If plaintiffs' data were reliable, then after the claims of both public and private builders are filed, the fund presumably would be allocated on a pro rata 80%-20% basis, and this would be based on the actual experience of the claimants rather than an arbitrary "before-the-fact" allocation worked out by plaintiffs' counsel who are less than disinterested in the outcome. The very opposition of counsel for the public bodies to the proposal of not allocating the fund prior to the filing of claims aptly illustrates that this Court must most carefully scrutinize their arbitrary, unsupported allocation proposal.

It also is most relevant that counsel for plaintiffs were forced to admit that the public bodies demanded $6 million [illegible] element of this case. This materially taints the validity of the 80%-20% allocation plan. In short, the 80%-20% formula is a mere attempt to bootstrap the demands of the public bodies at the expense of the private builders who did not have

the benefit of independent counsel in negotiating the plan of allocation.

1. The Dykeman or Price Waterhouse Study Is Patently Inapplicable To The 80%-20% Plan Of Allocation

Apparently aware of the invalidity and plain irrelevance of the so-called "Emhart statistics" (as will be shown below), at the eleventh hour at the June 2, 1976, hearing, plaintiffs' counsel sponsoring the 80%-20% allocation inappropriately submitted an affidavit of Lee A. Freeman, Jr., dated May 27, 1976, "in support of the settlement between Emhart Corporation and representative plaintiffs in the public class actions" (paragraph 2). That affidavit purported to demonstrate that a "study" undertaken by Francis C. Dykeman of Price Waterhouse supports the 80%-20% allocation. Both the invalidity and inapplicability of the Dykeman study was, for all practical purposes, conceded to by plaintiffs' counsel in his reply on June 2, 1976, when he admitted that rather than being a basis for the plan of allocation negotiated between plaintiffs' counsel this Dykeman material was only "corroboration" of the Emhart data.

The so-called Dykeman study was not made for the purposes of demonstrating that purchases by end-users of contract hardware fall into the 80%-20% public-private body grouping -- as Mr. Freeman purported to represent -- nor is it evidence of such an allocation. Mr. Dykeman's work was not a random study of all "jobs" undertaken throughout the country, but rather was undertaken to determine the types of information which could be derived from the documents selected in the discovery process by plaintiffs. Further, this analysis was made in terms of "jobs" and not either units or dollar purchases. For example, Exhibit I

to the Freeman affidavit has 134 "jobs" listed under the Public Hospital category, but it is impossible to determine whether these "jobs" utilized few or many master key locks, i.e., whether they were "big" or "small" jobs. Being prepared in terms of "jobs," the Dykeman analysis is inherently meaningless as an indicia of the industry's sales pattern.

In brief, the so-called Dykeman "study" is nothing more than a computerization of documents selected from hardware dealers' files by representatives of the public plaintiffs in order to show mark-ups on hardware "jobs" sold to general contractors for installation in various buildings. It is based on documents heavily weighted in favor of public "jobs" because they were culled out of the dealers' files to show not a general cross section of the dealers' sales, but rather to comprise a small biased sampling of hundreds of thousands of "jobs."

Further, the dealers, numbering 21 -- rather than 90, as stated in the Freeman affidavit -- are located in only seven states, as shown on Exhibit A hereto. The only conclusion that can be drawn from the Dykeman "study" is that of the "jobs" selected by the public plaintiffs, a certain percentage are public. The survey was not a scientific, impartial or unbiased sampling of numbers of "jobs," and hence the "study" cannot even corroborate any other evidence supporting an allocation between classes of the plaintiffs in this litigation.[1/]

In addition, the deposition of Mr. Dykeman wholly undercuts any evidentiary validity of the analysis of the "jobs" selected by plaintiffs. For example, Mr. Dykeman testified that he had no work papers dealing with the "study" which would permit cross-examination of the validity of how the "study" was done. (Dykeman Tr. at 59.) Mr. Dykeman further confirmed that

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1/ Also, of the 3500 "jobs" surveyed, more than 10% fall into either the "Unknown" or "Data Not Available" categories.

the data he relied on was "distributor data which the plaintiffs had obtained from a number of different states." (Id. at 66.) Also, although plaintiffs' counsel would lead this Court to believe that this was a study undertaken for the purpose of aiding the defense and affirmatively putting forward their case, Mr. Dykeman made it clear that he did not discuss with defense counse "the selection of distributors to include in the survey," (id. at 69), and further confirmed that records he analyzed were collected by the plaintiffs. (Id. at 71.) Finally, Mr. Dykeman stated affirmatively that he could not draw "any conclusion from the data" (id. at 74) and had no opinion respecting the data (id. at 75).

In short, it is totally meaningless to draw any conclusion as to the breakdown of industry sales from the information contained in Exhibit I to the Freeman affidavit, and the Dykeman deposition makes it manifestly clear that the study does not provide evidentiary support for an 80%-20% allocation of a nearly $8 million Settlement Fund between the public and private class members. In fact, data compiled by the Bureau of the Census shows that for the years 1968 through 1973, the percentage of private building increased from 67.5% to 71.8%.[1/] This gross disparity with the 80%-20% formula seriously undermines the credibility of the data in the Freeman affidavit.

2. The Emhart Data Is Both Irrelevant and Unreliable as an Indication of Emhart's Sales by End-User.

(a) The Emhart Data Is Irrelevant.

The undated "Notice Of Class Action And Partial Settlement With Respect To Litigation Involving Finished Hardware

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1/ Source: "Survey of Current Business," U.S. Department of Commerce, July 1972 and 1974.

mailed over the signature of the Clerk of this Court provides that public and private entities may qualify to share in the proceeds of the settlement offered by Emhart if those entities made purchases from "any" of the defendants (Paragraph B. 1, 2 and 3). Of course, this provision was necessary because this is a conspiracy action in which the defendants are jointly and severally liable as in a tort suit. Thus, a prospective class member could file a claim and receive distribution from the Emhart settlement proceeds even though it made all of its purchases from one of the non-settling defendants. Because of the conspiratorial nature of the allegations in the complaints, this is not only the law, but was in fact recognized by this Court itself in approving the terms of the "Notice" to the class.

Therefore, a purported analysis of Emhart's sales to public versus private bodies is totally irrelevant because the entire pool of prospective claimants undoubtedly did not purchase from the four co-defendants in the same ratio as the alleged 80%-20% public versus private entity sales purportedly made by Emhart. In short, because purchasers from all of the defendants -- not just from Emhart -- are eligible to make claims against the Emhart settlement proceeds, it is arbitrary to the point of capriciousness to apply an analysis of this one defendant's purported sales as a basis for allocation of the settlement fund.

The only fair way in which the Emhart settlement proceeds can be allocated must be based on those claims which may, in fact, be filed by purchasers, be they public or private bodies. This will be wholly fair to the public body class members if the 80%-20% formula has validity as urged by counsel for plaintiffs. On the other hand, if the arbitrary plan of allocation is approved by this Court on the basis of a wholly inadequate record, the

private entity class members will be deprived of their fair share of the settlement proceeds.

(b) The Emhart Data Does Not Establish That Its Sales Comport To The 80%-20% Formula.

In their brief memorandum in support of the settlement with Emhart, the plaintiffs devoted approximately only two pages to support the arbitrary allocation made between public and private bodies. The scant data provided in plaintiffs' Memorandum and Schedule "A" thereto is completely uninformative as to the nature of Emhart's sales. This is highlighted by the supporting affidavit of Karol K. Gibbs filed by plaintiffs at the June 2, 1976 hearing. Exhibits A through F thereto, contain "an analysis of contract orders, by Dodge Project Classification" for the years 1965-1968 (Gibbs Affidavit, ¶ 2).

An analysis of those Exhibits, and the statement in paragraph 2 of the Gibbs affidavit, make it clear that the data analyzed which forms the basis for Schedule A to plaintiffs' brief are contract "orders," and not sales by Emhart. Hence, the data contained therein may well include orders which were never filled by Emhart. The Emhart records relied on do not purport to be contemporaneous sales records, as stated in plaintiffs' brief where they are called "Emhart Corporation's annual summaries of contract hardware sales" (Plaintiffs' Memorandum at 11).

Additionally, the Dodge Classification System, comprised by a private institution, the F. W. Dodge Company, is

not designed for the purpose of delineating sales to public versus private bodies. As a result, reliance on Emhart's contract "orders" under this system is a totally distorted basis for the 80%-20% allocation. Further, an analysis of Schedule "A" appended to plaintiffs' Memorandum, and Exhibits 1 and 2 of the Gibbs affidavit, reveal a gross distortion of the use of the figures taken from the Dodge Construction Contract forms obtained from Emhart. For example, plaintiffs categorize all buildings which are "Educational" and "Science" under the public category, as well as all "Hospital and Health Buildings," and all "Public (Other)" buildings. At the outset, th "Public (Other)" includes a substantial portion of federal government building which is not included in the settlement.

Moreover, an analysis of the "Hospitals and Health Buildings" alone reveal that the wholly unreliable use of this data for the purpose of determining an allocation of Emhart's sales to public versus private entities. Rather than all "Hospitals and Health Buildings" being properly listed in the public sector, data compiled by the Department of Commerce reveals that a significant portion of hospitals and institutional building is in the private section. In fact those data show the following increasing percentage of private hospital and institutional building for the years 1968-1973:[1/]

1968	1969	1970	1971	1972	1973
69%	73%	75%	74%	76%	76%

Thus, despite a very large portion of hospital building being in the private sector, plaintiffs placed it all in the public section in support of their 80%-20% allocation.

1/ Source: "Survey of Current Business," U.S. Department of Commerce, July 1972 and 1974.

In short, even if relevant, the Emhart data selected from what is admitted in the Gibbs affidavit to be an analysis of contract "orders" rather than actual sales data or the Emhart Corporation, is lumped together in such a manner as to seriously distort the allocation of business done by Emhart in the public versus the private sector.

The Importance of This Court's Rejection of an Arbitrary Allocation of the Emhart Settlement Proceeds

The trial of this litigation against the non-settling defendants is set for this coming Fall, and they have stated their intention to litigate to judgment. Notwithstanding this, however, Emhart correctly pointed out the following in its Memorandum in support of its proposed settlement:

> As this Court is well aware, . . . few cases of this magnitude proceed to final judgment on the individual class claims. Settlement is the more usual course. (At 20; footnote omitted.)
>
> * * *
>
> [A] limited settlement [by one party] is desirable when complex, multiparty litigation is involved, for experience shows that disposition of an entire case by settlement often begins with settlement by one party. (At 21.)

In short, the Emhart settlement may well be the starting point to settlement of the remainder of the outstanding claims, and thus become the bellwether of those settlements which may follow.

With this in mind, there is no evidence before this Court that the 80%-20% plan of allocation -- even if it were reliable in relationship to Emhart's sales -- would meaningfully apply to the sales by its non-settling co-defendants. The so-called Dykeman study has been discredited as a basis for the 80%-20% plan of allocation, and it is most unlikely that the

sales pattern of the three non-settling defendants are identical.

Moreover, the orderly administration of the settlement of this entire litigation dictates that if, arguendo, another defendant should settle before judgment, both settlement funds should be combined prior to distribution. However, it will be impossible to administer the settlement if an arbitrary basis of allocation is adopted prior to the claims being filed by prospective class members. For example, if one of the remaining defendants should settle but its sales differ from the 80%-20% pattern arbitrarily ascribed to Emhart then it would be unmanageable to combine both settlement funds in order to administer one claims and distribution procedure. However, administering two separate settlements and claims procedures because of the disparity of public body-private body sales by those defendants would not only be unmanageable, but wholly inefficient. This would result in unnecessary charges to the class, and undue burdens on class members who would have to execute more than one claim form.

In any event, such a procedure is wholly inappropriate when the defendants are all jointly and severally liable; i.e., regardless of the makeup of sales to public bodies versus private entities by any of the defendants, each defendant is wholly liable for damages to any claimant or prospective class member regardless of which of the four co-conspirators made sales to that claimant. In short, in view of the prospect of further settlements in this case, the adoption of any formula as to the Emhart proceeds, even were it not wholly arbitrary, would be not only inappropriate, but would inevitably bog down the administration of the settlement in a procedural morass.

IF THIS COURT SHOULD APPROVE THE EMHART SETTLEMENT PROPOSAL WITH THE ARBITRARY 80%-20% ALLOCATION, FINAL JUDGMENT SHOULD NOT BE ENTERED

Objectors have demonstrated that it would be singularly inappropriate to approve the 80%-20% arbitrary allocation of the Emhart settlement proceeds based on the agreement reached by plaintiffs' counsel for two overriding reasons: First, that so-called "formula" is not supported by any reliable data of an evidentiary nature; secondly, it was the result of negotiations of an agreement between counsel, when counsel for the private builder-owner class has a disabling conflict of interest. Under the circumstances of this case, the only fair and orderly way of distributing the Emhart settlement proceeds is to make distribution of the total fund on the basis of those claims which are actually filed by prospective class members. Hence, Objectors respectfully submit that the $7.5 million settlement proposal should be approved without any premature, unsupported, arbitrary allocation of those proceeds between the public and private body classes.

If, however, Objectors' contentions are overruled by this Court and the settlement proposal as sponsored by plaintiffs' counsel with the 80%-20% allocation is approved, Objectors respectfully urge that this Court should not enter a final judgment as to the settlement in order to avoid piecemeal appeals. Although counsel for plaintiffs were involved in both the Central Protection Services Litigation and the Plumbing Fixtures Litigation, the "Notice" sent to the class in this litigation states that the petitions seeking "20% of the recovery as fees" would be filed. In the aforementioned litigation, however, the Courts of Appeals unanimously rejected a percentage of the recovery or "contingent fee syndrome" in awarding attorneys' fees in

settled class actions. City of Detroit v. Grinnell Corporation, 495 F.2d 448 (2d Cir. 1974); Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973).

Conclusion

For all of the foregoing reasons, Objectors respectfully submit that this Court should approve the $7.5 million settlement, absent a provision for allocating any portion of those proceeds between the public and private entity classes.

Respectfully submitted,

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Attorneys for
EXXON CORPORATION, et al.

Dated: June 4, 1976

LIST OF DISTRIBUTORS EXAMINED BY PRICE, WATERHOUSE

Architects Hardware & Specialty
Railroad Avenue
Albany, New York 12205

Architectural Hardware
800 W. Third Avenue
Columbus, Ohio

Beck-Guttman, Inc.
121 East 24th Street
New York, New York 10003

California Builders Hardware
166 Wisconsin Avenue
San Francisco, California

Capitol Builders Hardware
1831 F Street
Sacramento, Calif. 95814

Circle Hardware
1501 Ogden Avenue
Downer Grove, Illinois 60515

Cleveland Architectural Hardware
4260 Pearl Road
Cleveland, Ohio 44109

De Ronde Hardware, Inc.
1385 Genesse Street
Buffalo, New York 14211

Dan C. Hay, Inc.
4324 West Jefferson Blvd.
Los Angeles, Calif. 90016

Herbert Helmus
60 East Hilton Street
Garden City, New York 11530

Elmer T. Hobert, Inc.
410 East 62nd Street
New York, New York 10021

Carl Himes
317-319 S. Main Street
Dayton, Ohio 45402

Hopper, Inc.
2290 De la Cruz Blvd.
Santa Clara, Calif. 95050

Lind Hardware
5211 N. Clark Street
Chicago, Illinois 60604

Los Angeles Hardware
2700 S. LaCienega Blvd.
Los Angeles, Calif.

Norman & Sons
3050 23rd Street
San Francisco, California

Smith Brothers
580 N. Fourth Street
Columbus, Ohio 43215

Adolph Soeffing
828 Arch Street
Philadelphia, Pa.

Edward Stauber
1113 Greenwood Avenue
Waukegan, Illinois 60085

Tri-State Hardware
594 National Road
Wheeling, West Virginia

United Hardware
P.O. Box 127, Park Station
Paterson, New Jersey 07513

Wherry Hardware
P.O. Box 603
Trenton, New Jersey 08604

George Worthington Company
803 St. Clair Avenue, N.W.
Cleveland, Ohio 44101

EXHIBIT A

CERTIFICATE OF SERVICE

I, G. Joseph King, certify that I have this 4th day of June, 1976, served a copy of the foregoing Memorandum on those attorneys appearing on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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G. Joseph King

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

(521)

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

FILED
JUN 14 4 54 PM '76
U.S. DISTRICT COURT
HARTFORD, CONN.
JUN 14 1976
HARTFORD

Dismissed Moot; M.V.S. 6-14-76

MOTION TO STRIKE PORTIONS OF EXXON CORPORATION'S MEMORANDUM IN OPPOSITION TO APPROVAL OF THE ALLOCATION OF THE EMHART SETTLEMENT

Plaintiffs respectfully move this Court to strike all portions of "Exxon Corporation's Memorandum in Opposition to Approval of the 80-20% Allocation in the Emhart Corporation Settlement Offer" (filed June 4, 1976) except that portion appearing on pages 6, 7 and 8 under the subheading:

> "1. The Dykeman or Price Waterhouse Study is Patently Inapplicable to the 80%-20% Plan of Allocation."

and in support thereof represent:

1. At the hearing of June 2, 1976, on approval of the Emhart settlement and allocation thereof, objector Exxon Corporation ("Exxon") requested leave of this Court to respond by memorandum to the "Dykeman study" and for no other purpose.*/ Leave of Court was granted for this limited purpose.

*/ Exxon's basis for the request was that it did not have time prior to the hearing on June 2, 1976 to analyze the "Dykeman" study. In fact, the "Dykeman" study was annexed as an exhibit to the supporting memorandum filed by Emhart Corporation on May 27, 1976.

Continued on p. 2.

(521)

Pleading file

.03623-053-3

522

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN.
JUN 14 4 31 PM '76
FILED

IN RE:	:	M.D.L. DOCKET NO. 45
	:	
MASTER KEY ANTITRUST LITIGATION	:	ALL CASES

MICROFILM
JUN 14 1976
HARTFORD

MEMORANDUM OF DECISION

On June 30, 1975, the plaintiffs in the 15 class actions then pending[1/] submitted a proposed settlement with Emhart Corporation, one of the four defendants.

On February 26, 1976, notice of the proposed settlement was ordered sent to the members of both the public and private classes.[2/] Rule 23(e), Fed. R. Civ. P. Pursuant to this order, individual notices were mailed to members of both classes, including 17,729 copies to members of the private builder-owner class. In addition, extensive publication was provided.[3/]

1/ Since that time one new action has been filed, State of Arizona v. Emhart Corp., Civil No. H-75-382; and one action, Sturdy Homes Co. v. Eaton Corp., Civil No. 14,333, has been dismissed. The former action is included in this settlement

2/ This notice was combined with notice to the classes of the pending class actions. Rule 23(c)(2), Fed. R. Civ. P. A description of the classes in this litigation is set forth in this court's decision in In re Masterkey Antitrust Litigation, M.D.L. No. 45 (D. Conn. May 27, 1975).

3/ See Affidavits of Karol K. Gibbs, and Jack M. Joss, April 28, 1976.

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On June 2, 1976, a hearing on the fairness of the proposed settlement was held. No objections were made by any member of any of the public classes. Six written objections were received from members of the private builder-owner class,[4/] three of whom appeared at the hearing. One of the three chose not to press his objection after discussions with counsel for the plaintiffs.

No objection has been made to the amount of the proposed settlement. The only objections raised have been to the proposed division of the settlement fund between the private and public classes, with the former receiving 20 per cent and the latter 80 per cent.

In this case, the inter-class allocation of the settlement is based on something more than an arbitrary division by counsel for the various plaintiffs. The proposed allocation is, in fact, based on the historical allocation of Emhart's sales, as demonstrated by its record of orders during the period in question. Given this basis in fact, it is not necessary or appropriate to engage in speculation concerning possible atlernative allocations based on some other hypothetical circumstance.

The objectors make two different arguments. The first is that reliance should not be placed on the allocation as proven by the Emhart figures, but on the combined sales

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4/ Several of these were from attorneys who represented numerous clients, in one case as many as 250.

figures of all the defendants. There are two responses to this argument. The most pragmatic response is that the combined sales figures are simply not available at this time, if such figures exist at all.[5/] The second response is that the objectors have not demonstrated any reason to assume that the figures of the other defendants would differ materially from those presented by Emhart.[6/]

The second objection is that the attorney who has represented the private class up to this time, including during the negotiation of the terms of the proposed settlement, has an apparent conflict of interest in accepting the inter-class allocation, since he also represents the national governmental class. While this court does not ignore the apparent conflict, and while it will take steps to remedy the situation,[7/] the appearance of such a conflict does not automatically require the disapproval of the settlement,

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5/ The sales figures of the defendants Sargent and Eaton were the subject of a Rule 37 motion heard the same day as the settlement fairness hearing. Sargent has maintained that its records do not clearly delineate the private or public nature of the ultimate purchaser, or at least that the figures would be extremely difficult to distill.

6/ And this is despite the fact that at least one of the objectors, Exxon Corporation, has been receiving the active assistance of one of the non-settling defendants, Eaton Corp. Arguably this cooperation would have included some evidence of a different ratio, if one existed.

7/ This court will shortly appoint additional counsel to assist Mr. Montague in representing the private builder-owner class, and to act under his direction.

especially in the face of the objective evidence of fairness presented. In light of that evidence, and after weighing the small number of class members who chose to object and the fact that, to this point, the costs of this litigation have been borne chiefly by the members of the public class, I conclude that the proposed settlement is both reasonable and fair.

Pursuant to Rule 23(e), Fed. R. Civ. P., the proposed compromise of the claims against Emhart Corporation, as set forth in the settlement agreement is approved. The actions against the defendant, Emhart Corporation, may be dismissed upon the filing of an executed copy of the stipulation.

SO ORDERED.

Dated at Hartford, Connecticut, this 14th day of June, 1976.

M. Joseph Blumenfeld
United States District Judge

03623-053- 3

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

U.S. DIST. COURT
HARTFORD, CONN.

IN RE:

MASTER KEY ANTITRUST LITIGATION

MDL DOCKET NO. 45
(ALL CASES)
June 14, 1976

OBJECTORS' REPLY TO THE "MOTION TO STRIKE PORTIONS OF EXXON CORPORATION'S MEMORANDUM IN OPPOSITION TO APPROVAL OF THE ALLOCATION OF THE EMHART SETTLEMENT"

Objectors Exxon Corporation, et al. ("Objectors") make the following brief reply to plaintiffs' liaison counsel's motion to strike portions of Objectors' memorandum submitted in opposition to approval of the 80%-20% plan of allocation in the Emhart Corporation ("Emhart") settlement proposal:

1. At the outset, the motion to strike is an obvious guise to obfuscate the efforts of plaintiffs' liaison counsel to lead this Court into reversible error by having it approve the settlement proposal they sponsored containing an arbitrary, unfair plan of allocation which is unsupported by any reliable data before this Court. Despite their fiduciary duties to all class members by virtue of their position as Counsel for the Class Representatives, plaintiffs' liaison counsel would have this Court approve the settlement they sponsored without having full information and the benefit of the views of objecting members of the private builder-owner class as to the unfair nature of the proposed plan of allocation.

2. Plaintiffs' liaison counsel's motion to strike fully highlights the inadequate basis tendered to this Court as

support for the 80%-20% plan of allocation. Plaintiffs' liaison counsel would have this Court, sitting in equity to protect the rights of the absent class members, approve a settlement which is not fair to all class members. Were plaintiffs' liaison counsel confident in the soundness of the support they tendered as a basis for the 80%-20% plan of allocation, they need not have asked this Court to decide this matter in a vacuum by wholly ignoring the analysis contained in Objectors' memorandum which demonstrates the inherently unsound basis on which this Court was asked to approve the 80%-20% provision of the Emhart settlement proposal.

3. In addition to being a thinly disguised effort to prevent this Court from being fully informed as to the unsound basis for the 80%-20% plan of allocation, Plaintiffs' liaison counsel's motion is unfounded because in addition to the Freeman affidavit treating the Dykeman "study", Objectors were also served for the first time with the Gibbs affidavit during the course of the June 2, 1976, hearing. The Gibbs affidavit purportedly provided additional support for the 80%-20% plan of allocation and was allegedly based on Emhart's internal sales records.

4. Significantly, plaintiffs' liaison counsel's motion to strike does not even address -- much less refute -- the substance of Objectors' contentions with respect to either the Dykeman "study" or the relevance or validity of the purported analysis of Emhart's sales statistics offered in support of the 80%-20% plan of allocation in the Gibbs affidavit.

5. Finally, no denial was made of Objectors' contentions that the 80%-20% plan of allocation was the result of negotiation between counsel having a blatant conflict of interest

or to the fact that the belated resort to the unsound Dykeman "study" and Emhart "statistics" was a mere attempt to "bootstrap" the arbitrary plan of allocation privately reached by plaintiffs' counsel. The pending motion to strike and attempt to have this Court ignore the refutation of the only support put forth in an attempt to justify the arbitrary 80%-20% "formula" aptly demonstrates the need for this court of equity to fully and carefully scrutinize this settlement sponsored by counsel having a conflict of interest. Objectors' memorandum, which plaintiffs' liaison counsel would prefer that this Court not consider, demonstrates that the arbitrary 80%-20% plan of allocation should not be approved by this Court as fair to all interested class members.

For all of the foregoing reasons, Objectors respectfully submit that: (a) Plaintiffs' liaison counsel's motion to strike should be denied; and (b) as aptly illustrated by that motion, the Emhart settlement should be approved <u>without</u> the 80%-20% plan of allocation which is arbitrary and wholly unfair to the private builder-owner class members whose interests are under the equitable protection of this Court. In short, the very nature of and lack of substance in plaintiffs' liaison counsel's response to Objectors' memorandum (<u>i.e.</u>, a motion to strike), constitutes a dispositive concession that this Court, sitting in equity, should not approve the 80%-20% allocation provision of the Emhart settlement proposal.

Respectfully submitted,

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G. JOSEPH KING
HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
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Counsel for Objectors
Exxon Corporation, et al.

June 14, 1976

CERTIFICATE OF SERVICE

I, G. Joseph King, certify that I have this 14th day of June, 1976, served a copy of the foregoing Memorandum on those attorneys appearing on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
JUN 24 8 35 PM '75
U.S. DISTRICT COURT
WATERBURY, CONN.

IN RE:	Multi-District Litigation
MASTER KEY ANTITRUST LITIGATION	Docket No. 45

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT OF ROBERT J. SHEEHAN

Robert J. Sheehan, being first duly sworn, deposes and says:

1. I am Director of Economic Research of the National Association of Home Builders, with offices in Washington, D.C. For the past 16 years, I have been professionally engaged as an economist, and have primarily devoted my services to the field of the housing and construction industry.

2. I first learned of this litigation after having been contacted by Paul R. Hirshfield, counsel for the Home Builders Association of Metropolitan Pittsburgh, one of our members. Mr. Hirshfield discussed certain aspects of the proposed settlement in this case with the Emhart Corporation and raised a question as to the validity of the 80%-20% public versus private builder-owner allocation contained in the settlement proposal.

3. After having discussions with Mr. Hirshfield, I reviewed published Government statistics on buildings in place, and have arrived at the conclusion that the 80%-20% division does not comport with available industry data. Also, I reviewed the affidavit

of Karol K. Gibbs, sworn to on May 28, 1976, and Schedule "A" of the Memorandum In Support Of Settlement With Emhart Corporation, both of which purportedly contain an analysis of certain data of the Emhart Corporation categorized according to the F. W. Dodge Company's Project Classifications. (See Paragraph 2 of the Gibbs Affidavit.) Based upon my review of that data, and the aforementioned industry-wide data published by the Bureau of the Census of the United States Department of Commerce, I have reached the conclusion that the 80%-20% breakdown of public versus private sales presented in the Gibbs Affidavit and Schedule "A" is based on an arbitrary distortion of the Dodge categories of the "Construction Orders Received (Orders By D.P.C.)" appended to the Gibbs Affidavit as Exhibits A - F for the years 1965-1970, and further analyzed in Exhibits 1 and 2 of that Affidavit.

4. Exhibit 1 of the Gibbs Affidavit portrays that according to Dodge Project Classification, 78.1% of Emhart's sales were to public entities versus 21.9% to private entities. However, those classifications resulted from a manipulation of the Emhart data contained on the F. W. Dodge Company forms, and these figures (i.e., 78.1% versus 21.9%) do not appear in the Emhart data contained in Exhibits A - F of that Affidavit. For example, Exhibit 1 places all "Educational & Science Buildings", 51.8% of the total of Emhart's sales, and all "Dormitories" (2.2%), or 54.4% of the total, into the public sector, when official data of buildings in place reveals that a significant dollar volume of educational buildings in place were, in fact, in the private sector.

5. The gerrymandered nature of the 80%-20% plan of allocation based on the manipulation of the Emhart data is aptly

demonstrated by the classification as public buildings in Exhibit 1 of the Gibbs Affidavit of all buildings in Item 4 on the Dodge classification forms as "Hospitals and Health Bldgs." In fact, as shown by the following statistics, the latest published data reveals that of the years 1968 through 1970, for which data is available, most hospital construction was in the private sector:

	1968 %	1969 %	1970* %
Percentage In Private Sector	69	73	75

6. Further, although the Government data treats all buildings in place and not just those buildings having master key lock systems, the gross disparity between the published data on construction and the portrayal of the manipulated Emhart data in "Schedule A" presented to this Court and the Gibbs Affidavit, in my professional opinion, casts substantial doubt on the validity of the 80%-20% formula. Published data, as presented in the following table, reveals that public building -- including Federal construction projects -- accounted for only about half of all new building in the period 1965-1970:

VALUE OF NEW CONSTRUCTION PUT IN PLACE
IN THE UNITED STATES
(in Millions of Dollars)

	Private		Public	Percent Public
Year	Multifamily Residential	Non Residential Buildings	Buildings	of Total
1965	6,007	16,509	22,062	49%
1966	5,243	18,279	24,007	51
1967	4,724	17,589	25,536	53
1968	7,203	18,164	27,605	52
1969	9,528	21,155	27,964	48
1970	9,518	21,417	28,096	48

Source: U.S. Department of Commerce, Bureau of the Census, Construction Reports, Series C 30, Value of New Construction Put in Place, February 1976.

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* Source: U.S. Department of Commerce, Bureau of the Census, Series C 30, Value of New Construction Put in Place, February 1976.

7. Because the 80%-20% arbitrary classification was reached as a result of an arbitrary classification of Emhart's data contained in Exhibits A - F of the Gibbs Affidavit, my comparison of the claimed analysis of that data leads to two conclusions: (1) The 80%-20% allocation is wholly artitrary and in conflict with available industry-wide data; and (2) the 80%-20% allocation is not a true representation of Emhart's sales to the public versus the private sector because of the arbitrary classification of significant categories of Emhart's orders according to the Dodge Project Classification as sales to public bodies when in fact significant portions thereof were undoubtedly sales by Emhart to private builder-owners.

ROBERT J. SHEEHAN

Sworn to and subscribed before me
this 22 day of June, 1976.

Notary Public

My commission expires My Commission Expires March 31, 1978

CERTIFICATE OF SERVICE

I, G. Joseph King, certify that I have this 22nd day of June, 1976, served a copy of the foregoing Motion to Reconsider on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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FILED

UNITED STATES DISTRICT COURT '76

DISTRICT OF CONNECTICUT COURT

IN RE:	MDL DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	(ALL CASES)
	June 22, 1976

OBJECTORS' MOTION FOR RECONSIDERATION

Pursuant to Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure, Exxon Corporation, et al. ("Objectors") hereby move this Court for an Order vacating its Order of June 14, 1976, approving the arbitrary 80%-20% allocation provision of the compromise of the classes' claims against the Emhart Corporation ("Emhart"). As grounds for this motion, Objectors assert as follows:

1. On June 2, 1976, pursuant to notice sent to prospective class members, this Court entertained a hearing as to the fairness of the proposed settlement offered by defendant Emhart and sponsored by plaintiffs' liaison counsel. This settlement proposal contained a so-called 80%-20% plan of allocation resulting from an agreement among plaintiffs' counsel representing the various classes (plaintiffs' liaison counsel's Memorandum In Support Of Settlement With Emhart Corporation, page 5), including counsel having a blatant conflict of interest because of the dual representation of classes having competing interests in the distribution of the settlement proceeds.

2. During the course of the June 2, 1976, hearing, for the first time, plaintiffs' liaison counsel sponsoring the

settlement filed with the Court and served on Objectors' counsel two affidavits, namely, the affidavit of Lee A. Freeman, Jr., and of Karol K. Gibbs, purportedly supporting the arbitrary 80%-20% plan of allocation. Neither the Notice to the class nor the settlement agreement on file with this Court contained any basis for the allocation agreed to by plaintiffs' liaison counsel.

3. Confronted for the first time with the submissions of plaintiffs' liaison counsel during the course of the hearing, Objectors' counsel addressed the purported support put forward as a basis for the 80%-20% plan of allocation and stated " . . . I believe we have a real problem with the statistics, and the statistical presentation here" (June 2, 1976, transcript at 59). Accordingly, leave was requested to file a post-hearing memorandum "to assist the Court in understanding the data put before it" (id. at 61). Despite the fact that the offices of Objectors' counsel are in Washington, D.C., this Court denied the request for ten (10) days in which to file a post-hearing memorandum, and permitted Objectors effectively one working day in which to prepare and file their analysis of the belated support put forward as a basis for the arbitrary allocation of the settlement fund which, with interest, now approximates $8 million:

> MR. KING: * * * [I]f I could have ten days to file a memorandum, I could aid the Court in making certain that all of the facts were before it.
>
> THE COURT: I'll give you until Friday (Id.).

On June 4, 1974, Objectors' post-hearing Memorandum was timely filed.

4. One week later, plaintiffs' liaison counsel responded to Objectors' Memorandum addressed to the deficiencies in the dat

offered in support of the 80%-20% plan of allocation (by way of a Motion to Strike).[1/] This response was received by Objectors' counsel on June 14, 1976, and that same day, Objectors served and forwarded to the Court for filing a reply which demonstrated that plaintiffs' liaison counsel, although taking one week to respond to Objectors' memorandum, failed to refute any substantive point raised by Objectors.

5. Prior to receiving Objectors' reply to plaintiffs' liaison counsel's response, this Court overruled Objectors' contentions and in a brief summary Memorandum Of Decision, approved the 80%-20% plan of allocation on June 14, 1976.

6. This present motion to reconsider is occasioned by the fact that this Court approved the 80%-20% plan of allocation without having had the benefit of Objectors' reply to plaintiffs' liaison counsel's motion to strike, which pointed out plaintiffs' liaison counsel's inability to refute Objectors' contentions, and by the inconsistency and lack of evidentiary support for the conclusory statements in this Court's aforementioned Memorandum Of Decision.

7. On page 3 of this Court's Memorandum Of Decision, it rejected Objectors' contention that reliance should not be placed on Emhart's figures, but rather on the combined sales of all defendants, as follows:

> The most pragmatic response is that the combined sales figures are simply not available at this time, if such figures exist at all (Memorandum Of Decision, at 3; footnote omitted).

1/ On June 14, 1976, the Court dismissed this motion as moot.

The footnote to that sentence characterizes the positions of non-settling defendants Sargent and Eaton as to the unavailability of the figures to delineate sales to private versus public purchasers. However, the following sentence of the text of the decision states that Objectors have not demonstrated that the sales data of the other non-settling defendants would differ materially from those presented by Emhart, and in a footnote thereto, makes allusion to the fact that counsel for Eaton could have provided counsel for Objectors with contrary data! This is totally at odds with the prior inconsistent findings by the Court that "the combined sales figures are simply not available at this time".

8. Moreover, this Court afforded Objectors' counsel but one working day in which to prepare a response to the submissions made by plaintiffs' liaison counsel during the course of the June 2, 1976, "fairness" hearing, and in view of the finding that industry-wide data was not uncovered by plaintiffs' liaison counsel who purportedly have litigated for in excess of five years, Objectors respectfully subrit that it was unfair to shift the burden to Objectors to produce this data literally "overnight".

9. The record is devoid of credible evidentiary support for the 80%-20% plan of allocation. This Court apparently recognized the irrelevance of the Dykeman "study" tendered to this Court in the affidavit of Mr. Freeman, plaintiffs' lead counsel. As a last resort, this Court approved the plan of allocation solely on the so-called Emhart sales data tendered to the Court in the Gibbs Affidavit, and erroneously found as follows:

> The proposed allocation is, in fact, based on the historical allocation of Emhart's sales, as demonstrated by its record of orders during the period in question (Memorandum Of Decision, at 2).

The irrelevance and invalidity of the Emhart data was addressed in Objectors' post-hearing Memorandum (pages 8-12), and neither plaintiffs' liaison counsel nor this Court have dispositively addressed those contentions. In short, as made clear by the affidavit of Robert J. Sheehan, Director of Economic Research of the National Association of Home Builders, a disinterested third party (a copy of which is appended hereto for the Court's convenience), the Emhart data has been distorted. The Sheehan Affidavit totally discredits the arbitrary classification of the Emhart data made by plaintiffs' liaison counsel, and demonstrates that the 80%-20% allocation is contrary to reliable U.S. Government industry data.

10. Not only is the 80%-20% formula contrary to the best available and reliable industry-wide official data, the Sheehan Affidavit demonstrates that the 80%-20% "formula" is not representative of Emhart's sales as found by this Court. To the contrary, the 80%-20% purported allocation of Emhart's sales is an after-the-fact, "bootstrap" attempt made by plaintiffs' liaison counsel to justify the agreement reached among themselves and is based on a distortion and artful manipulation of Emhart's actual data. Rather than being based on an objective presentation of Emhart's data, the 80%-20% formula is grounded on an arbitrary assignment of certain categories of Emhart's orders to the public sector when, in fact, significant portions of project categories such as hospital and health service buildings, educational buildings and dormitories, are not accounted for wholly by the public sector. Any summary conclusion to the contrary is wholly unsound, as demonstrated by the Sheehan Affidavit.

For all of the foregoing reasons, it is respectfully submitted that this Court's Order and Memorandum of Decision of June 14, 1976, should be vacated, and that the Emhart settlement proposal can be approved by this Court as fair to both the publi body and private body builder-owners only in the absence of any arbitrary allocation provision adopted prior to the filing of claim forms based on the actual experiences of purchasers of master key systems.

Respectfully submitted,

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Attorneys for
EXXON CORPORATION, et al.

Dated: June 22, 1976

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	Multi-District Litigation Docket No. 45

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT OF ROBERT J. SHEEHAN

Robert J. Sheehan, being first duly sworn, deposes and says:

1. I am Director of Economic Research of the National Association of Home Builders, with offices in Washington, D.C. For the past 16 years, I have been professionally engaged as an economist, and have primarily devoted my services to the field of the housing and construction industry.

2. I first learned of this litigation after having been contacted by Paul R. Hirshfield, counsel for the Home Builders Association of Metropolitan Pittsburgh, one of our members. Mr. Hirshfield discussed certain aspects of the proposed settlement in this case with the Emhart Corporation and raised a question as to the validity of the 80%-20% public versus private builder-owner allocation contained in the settlement proposal.

3. After having discussions with Mr. Hirshfield, I reviewed published Government statistics on buildings in place, and have arrived at the conclusion that the 80%-20% division does not comport with available industry data. Also, I reviewed the affidavit

of Karol K. Gibbs, sworn to on May 28, 1976, and Schedule "A" of the Memorandum In Support Of Settlement With Emhart Corporation both of which purportedly contain an analysis of certain dat of the Emhart Corporation categorized according to the F. W. Dodge Company's Project Classifications. (See Paragraph 2 of the Gibbs Affidavit.) Based upon my review of that data, and the aforementioned industry-wide data published by the Bureau of the Census of the United States Department of Commerce, I have reached the conclusion that the 80%-20% breakdown of public versus private sales presented in the Gibbs Affidavit and Schedule "A" is based on an arbitrary distortion of the Dodge categories of the "Construction Orders Received (Orders By D.P.C.)" appended to the Gibbs Affidavit as Exhibits A - F for the years 1965-1970, and further analyzed in Exhibits 1 and 2 of that Affidavit.

4. Exhibit 1 of the Gibbs Affidavit portrays that according to Dodge Project Classification, 78.1% of Emhart's sales were to public entities versus 21.9% to private entities. However, those classifications resulted from a manipulation of the Emhart data contained on the F. W. Dodge Company forms, and these figures (i.e., 78.1% versus 21.9%) do not appear in the Emhart data contained in Exhibits A - F of that Affidavit. For example, Exhibit 1 places all "Educational & Science Buildings", 51.8% of the total of Emhart's sales, and all "Dormitories" (2.2%), or 54.4% of the total, into the public sector, when official data of buildings in place reveals that a significant dollar volume of educational buildings in place were, in fact, in the private sector.

5. The gerrymandered nature of the 80%-20% plan of allocation based on the manipulation of the Emhart data is aptly

demonstrated by the classification as public buildings in Exhibit 1 of the Gibbs Affidavit of all buildings in Item 4 on the Dodge classification forms as "Hospitals and Health Bldgs." In fact, as shown by the following statistics, the latest published data reveals that of the years 1968 through 1970, for which data is available, most hospital construction was in the private sector:

	1968 %	1969 %	1970* %
Percentage In Private Sector	69	73	75

6. Further, although the Government data treats all buildings in place and not just those buildings having master key lock systems, the gross disparity between the published data on construction and the portrayal of the manipulated Emhart data in "Schedule A" presented to this Court and the Gibbs Affidavit, in my professional opinion, casts substantial doubt on the validity of the 80%-20% formula. Published data, as presented in the following table, reveals that public building -- including Federal construction projects -- accounted for only about half of all new building in the period 1965-1970:

VALUE OF NEW CONSTRUCTION PUT IN PLACE
IN THE UNITED STATES
(in Millions of Dollars)

	Private		Public	Percent Public
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1969	9,528	21,155	27,964	48
1970	9,518	21,4[illegible]7	28,096	48

Source: U.S. Department of Commerce, Bureau of the Census, Construction Reports, Series C 30, Value of New Construction Put in Place, February 1976.

* Source: U.S. Department of Commerce, Bureau of the Census, Series C 30, Value of New Construction Put in Place, February 1976.

7. Because the 80%-20% arbitrary classification was reached as a result of an arbitrary classification of Emhart's data contained in Exhibits A - F of the Gibbs Affidavit, my comparison of the claimed analysis of that data leads to two conclusions: (1) The 80%-20% allocation is wholly artitrary and in conflict with available industry-wide data; and (2) the 80%-20% allocation is not a true representation of Emhart's sales to the public versus the private sector because of the arbitrary classification of significant categories of Emhart's orders according to the Dodge Project Classification as sales to public bodies when in fact significant portions thereof were undoubtedly sales by Emhart to private builder-owners.

Robert J. Sheehan

ROBERT J. SHEEHAN

Sworn to and subscribed before me
this 22 day of June, 1976.

Notary Public

My commission expires My Commission Expires March 31, 1978

CERTIFICATE OF SERVICE

I, G. Joseph King, certify that I have this 22nd day of June, 1976, served a copy of the foregoing Motion to Reconsider on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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G. Joseph King

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

PLAINTIFFS' RESPONSE TO OBJECTOR EXXON CORPORATION'S MOTION FOR RECONSIDERATION RE APPROVAL AND ALLOCATION OF THE EMHART SETTLEMENT

Plaintiffs respectfully file this response in opposition to objector Exxon Corporation's (hereinafter "Exxon") Motion for reconsideration of this Court's Order and Memorandum of Decision of June 14, 1976, approving the Emhart Settlement and allocation thereof among the private and public classes. Plaintiffs urge that this Court deny Exxon's motion on the following grounds:

1. Exxon has raised no new facts or legal matter which have not already been raised before and considered by the Court both at the June 2, 1976 hearing and in the Court's Order of June 14, 1976.

2. At the June 2, 1976 hearing, Exxon offered no evidence in support of its objection to the allocation of the Settlement, although the hearing on approval was held more than two months after notice was given to the class. Moreover, Exxon made no attempt to review any evidence or other factual material in the possession of plaintiffs and defendant Emhart prior to the June 2, 1976 hearing.

3. The affidavit submitted by Robert J. Sheehan should not be considered because:

(a) It presents no information which was not available at the time of the June 2, 1976 hearing and indeed relies upon the same United States Bureau of Census Survey as cited by Samuel H. Seymour in his affidavit presented to the Court on June 2, 1976.

(b) There is no excuse or explanation given as to why Exxon did not submit the Sheehan Affidavit or its equivalent prior to the June 2, 1976 hearing. Mr. Sheehan states that he first discussed the allocation of the Emhart Settlement with Paul M. Hirshfield, Esquire, but Mr. Sheehan conspicuously omits the date on which those discussions took place.

(c) The affidavit is very misleading in that affiant includes in his figures for "non-residential" private construction categories of buildings not within the private class (Industrial, Commercial,*/ Religious, Educational, Hospital and Institutional and other non-residential buildings). Moreover, he includes in the statistics for "Multifamily Residential" private construction buildings which are 2 to 4 units and would not be master keyed.**/ While the U. S. Bureau of Census figures point this out, Mr. Sheehan does not so inform the Court.

---

*/ The only non-residential buildings included in the private class are "office buildings" which comprise part of the "commercial category."

**/ Indeed, many buildings of "5 units and over" may not be master keyed or may not be master keyed by defendants herein. These are just some examples of the many uncertainties which surround Exxon's suggested statistics.

More particularly, the U.S. Bureau of Census figures for "Valuation of Private Construction authorized by Building Permits: 1967 to 1972"*/ shows that for 1967, only 16.8% of "Non-Residential" buildings were office buildings. Office buildings are the only category of non-residential building covered by this class settlement. Thus, Exxon's and Mr. Sheehan's Non-Residential figure must be reduced by 83.2% (100% - 16.8%) to $2,955 million ($17,589 million x 16.8%).

The "Multifamily Residential" figures used by Exxon and Mr. Sheehan include buildings 2 to 4 units which generally are not master keyed and should not be included within the class. The same U.S. Bureau of Census figures show that of all "Multifamily Residential" buildings, 83.7% include 5 units and over.**/ Thus Exxon's figure for "Multifamily" buildings in 1967 must be reduced by 100% - 83.7% or by 16.3%, which amounts to $3,954 million. However, to this figure we must add the U.S. Census figures for "non-housekeeping" units in 1967, which is $521 million. This gives a total for 1967 for Multifamily buildings of $4,475 million.

With these adjustments, the proper figure for relevant Private construction in this case for 1967 is $7,430 million ($4,475 million plus $2,955 million).

---

*/ As taken from Statistical Abstract of the United States, 1973, Table No. 1141.

**/ While the uncertainties of Exxon's figures were illustrated by a previous footnote, for purposes of Exxon's motion, plaintiffs will assume all are master keyed.

Exxon's statistics for public buildings for 1967 is $25,536 million. Thus the total relevant construction for both public and private classes, using U.S. Census Bureau figures, is $32,966 million. Using these figures, the private class consists of 22.54% of the total construction and the public class consists of 77.46%. (These figures are summarized on Appendix "A" hereto). Thus, as corrected, the U.S. Census Bureau figures, even with all their uncertainties, clearly support the Emhart sales figures.

(d) The figures advanced by Mr. Sheehan do not relate to the contract hardware industry and do not at all consider the fact that contract hardware represents only approximately .25% of private construction costs (Scavo Deposition, 14) and "a fraction of 1% to as much as 4% or 5%" of public construction costs (Belfi Deposition, 34). It also does not take into consideration the following factors

(i) only hotels, motels, apartment buildings and office buildings are included from all private building construction, whereas all public building construction is included.

(ii) the vast majority of master key extensions occur in the public sector, in buildings such as schools and colleges.

(iii) in private construction, contract hardware is frequently purchased on an allowance basis and not by the competitive bidding required in public construction.

4. The motives of objector Exxon appear suspect; and its position is calculated to delay the trial and disrupt preparation by plaintiffs. With the "active assistance" of Eaton (Memorandum of Decision, June 14, 1976, at p.3, n. 6/, Exxon argues for a claim forms procedure, the same position urged by Eaton and rejected by the Court.

WHEREFORE, plaintiffs respectfully urge that Exxon's Motion for Reconsideration be denied.

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Chicago, IL 60611

DATED:

I. REVISED ESTIMATES FOR RELEVANT PRIVATE CONSTRUCTION FROM U.S. BUREAU OF CENSUS STATISTICS FOR THE YEAR 1967.

A. "Multifamily Residential"

1.	Exxon's (Sheehan's) figures:	$ 4,724,000,000
2.	Correct relevant figures:	$ 4,475,000,000

B. "Non-Residential Buildings"

1.	Exxon's (Sheehan's) figures:	$17,589,000,000
2.	Correct "office building" figures:	$ 2,955,000,000

C. Total Relevant Private Construction

1.	Exxon's (Sheehan's) figures:	$22,313,000,000
2.	Correct relevant figures:	$ 7,430,000,000

II. PERCENTAGE OF RELEVANT PRIVATE v. PUBLIC CONSTRUCTION FOR 1967 BASED ON REVISED ESTIMATES FROM U.S. BUREAU OF CENSUS STATISTICS.

A. As Exxon (Sheehan) Has Represented:

1.	Total private construction:	$22,313,000,000
2.	Total public construction:	$25,536,000,000
3.	Percentages:	
	Public:	53%
	Private:	47%

B. As Represented By Revised Relevant Estimates:

1.	Total private construction:	$ 7,430,000,000
2.	Total public construction:	$25,536,000,000
3.	Percentages:	
	Public:	77.5%
	Private:	22.5%

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

ALL CASES

MOTION TO APPROVE SETTLEMENT AGREEMENT OF DEFENDANT ILCO CORPORATION

Defendant Ilco Corporation and liaison counsel for plaintiffs respectfully move the Court to approve the Settlement Agreement of Ilco Corporation attached hereto as Exhibit "A".

ILCO CORPORATION

By Charles Donelan
Charles Donelan
Its Attorney
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EXHIBIT "A"

SETTLEMENT AGREEMENT (ILCO CORPORATION)

This Settlement Agreement is entered into among the undersigned in compromise and settlement of the claims of all plaintiffs (which as used herein includes intervenors) and all members of the classes in the cases listed below; including all antitrust claims, concerning any purchase to date, whether direct or indirect, of master key systems, master key extensions, locksets, door closers, exit devices, builders' hardware or contract hardware ("contract hardware"), which any and all plaintiffs and class members have asserted or might assert against Ilco Corporation (the "Settling Defendant"), including but not limited to the claims set forth in the following actions now pending in the United States District Court for the District of Connecticut (the "Court"):

	Name	Civil Action No.
1.	State of Illinois v. Emhart Corp., et al.	15,262
2.	State of Indiana v. Emhart Corp., et al.	14,148
3.	Commonwealth of Pennsylvania v. Emhart Corp., et al.	14,191
4.	State of West Virginia v. Emhart Corp., et al.	15,038
5.	State of Minnesota v. Emhart Corp., et al.	14,233
6.	State of Michigan v. Emhart Corp., et al.	14,233
7.	State of Wisconsin v. Emhart Corp., et al.	14,233

	Name	Civil Action No.
8.	State of Ohio v. Emhart Corp., et al.	14,384
9.	State of New York v. Emhart Corp., et al.	14,236
10.	State of Kansas v. Emhart Corp., et al.	14,546
11.	State of Florida v. Emhart Corp., et al.	14,231
12.	State of Connecticut v. Emhart Corp., et al.	14;147
13.	State of California v. Emhart Corp., et al.	H-61
14.	State of New Jersey v. Emhart Corp., et al.	15,664
15.	Sturdy Homes Co., et al. v. Emhart Corp., et al.	14,333
16.	City of New York v. Emhart Corp., et al.	14,235
17.	City of Philadelphia v. Emhart Corp., et al.	14,233
18.	Amherst Leasing v. Emhart Corp., et al.	14,234
19.	State of Arizona v. Emhart Corp., et al.	H75-382
20.	State of Colorado v. Emhart Corp., et al.	14,233

The actions named above will hereinafter be referred to collectively as "these actions". If other states or parties intervene in any of the above actions or file separate suits prior to judicial approval of this settlement, then such states or parties shall be deemed to be included in the above list of actions.

1. The Signatories to this Agreement

The signatories hereunto enter into this Agreement on behalf of the following:

1. Lee A. Freeman, Jr., Esq., and H. Laddie Montague, Jr., Esq., as liaison counsel, agents, and representatives for the following:

a. Each named state and local governmental plaintiff and all class members of each state and local governmental class in these actions, representing all state, county, and municipal agencies, authorities, commissions and all political subdivisions and entities situated in each of those above-named states, including school districts, boards of education, hospitals and other institutions supported in whole or part by public funds, and including the class members in the certified national class action on behalf of public entities.

b. Each named plaintiff and class member in those actions brought on behalf of private owners and builder owners of apartment houses, office buildings, hotels and motels throughout the United States.

The above-named counsel will be referred to hereinafter as "Plaintiffs' Counsel," and the above-named and above-referenced plaintiffs and class members will be referred to collectively as the "Settling Plaintiffs." Plaintiffs' Counsel represent that they are authorized to take all steps on behalf of the respective plaintiffs and class members which this Agreement contemplates.

2. Charles Donohan, Esq., as counsel for Ilco Corporation, the Settling Defendant.

II. Covenants of the Settling Parties

In consideration of the covenants and agreements herein set forth, it is agreed as follows:

A. The Settling Defendant denies that it or any of its predecessors or present or former agents, officers, directors or employees comitted, conspired to commit, or participated in any violation of the antitrust laws or other laws, or that it is liable to the Settling Plaintiffs or to anyone for damages relating to the sale of contract hardware, arising out of, related to, or based, in whole or in part, on any of the facts or matters alleged in these actions, and neither this Agreement nor the carrying out of any of the actions contemplated hereby shall be deemed or construed in any way as an admission of any of the foregoing. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of the Settling Defendant. The Settling Defendant enters into this Agreement in order to put to rest all controversy and to avoid lengthy, costly and time-consuming litigation and to obtain a compromise and final settlement of the Settling Plaintiffs' claims without in any way acknowledging any fault or liability.

B. Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from its parent company, Unican Security Systems, Ltd., a Canadian corporation, and that as a matter of law a judgment against Ilco in this litigation could not be enforced against Unican.

C. The Settling Defendant will pay $85,000.00 into a settlement fund ("the Fund") in compromise and final settlement of all the Settling Plaintiffs' claims against the Settling Defendant. Of this amount $25,000.00 shall be paid into the Fund upon execution of this Agreement; the balance of $60,000.00 shall be paid in twelve (12) $5,000.00 installments commencing July 1, 1976 drawn on a letter of credit to the First National Bank of Boston; provided, however, that prior to June 8, 1976, each named plaintiff in these actions has accepted this Agreement in writing on behalf of itself and the respective class or classes it represents. The Fund shall be used to reimburse

common litigation expenses incurred by Settling Plaintiffs.

D. The Settling Defendant will deposit the Fund into an escrow account, No. 503 254110, held by The Connecticut Bank and Trust Company as escrow agent pursuant to the terms of an escrow agreement to be entered into, with Court approval, between the escrow agent and the settling parties. Lee A. Freeman, Jr., Esq., shall be the sole trustee of the escrow account. No distributions or payments of any kind shall be made from the Fund unless pursuant to an order of the Court.

E. The Settling Defendant and Settling Plaintiffs shall use their best efforts in good faith to agree upon a form of notice to be submitted to the Court for its approval. Notices in the form approved by the Court shall be given as the Court directs.

F. Consummation of this settlement is subject to the approval of the Court under Rule 23. Subject to the terms of this agreement, the Court may, after the interested parties have been given notice and an opportunity to be heard, make all such determinations and orders as it may deem necessary or proper for the implementation and consummation of this settlement.

G. No distribution of the Fund shall be made until Court approval of the settlement and dismissal of Settling Defendant have become final either by affirmance in the event of any appeal or appeals or by expiration of the time for appeal.

H. The Settling Plaintiffs, jointly and severally, including all named plaintiffs and all class members, do hereby expressly covenant, promise and agree that the Settling Plaintiffs shall not now or hereafter institute, maintain or assert in any way any claims against the Settling Defendant, its predecessors, stockholders, officers directors, agents or employees, past or present, which claims are based upon or arise out of any alleged violation of any antitrust laws, or other laws, or which relate in any way to the sale or purchase, whether direct or indirect, of contract hardware to the date of this agreement. So long as the litigation continues against any non-settling defendant the above covenant shall not be construed as a release.

I. The sales of contract hardware by the Settling Defendant shall remain in these actions in support of claims for alleged damages asserted against the other defendants.

J. The Settling Defendant shall provide information regarding its pricing and sales of contract hardware and builders hardware to the extent that such information is available; provide information regarding the installation of Lockwood Master Key Systems; respond to reasonable requests for admissions of fact under Rule 36, F.R.Civ.P.; make available such witnesses for potential use at trial by Plaintiffs as remain under Settling Defendant's direction and control; and retain all records with respect to pricing and sales of contract hardware and the installation of Lockwood

Master Key System for use by Settling Plaintiffs.

K. In the event that it is judicially determined by any court having jurisdiction, that this settlement cannot be consummated, or if the Settling Defendant withdraws from this Agreement pursuant to its terms, the amounts contributed to the Fund by the Settling Defendant, together with the interest earned on such amounts, shall be returned promptly to the Settling Defendant.

L. All interest earned by the Fund shall accrue to the Settling Plaintiffs. Except as provided below, all costs and expenses incurred in any of the proceedings under this Agreement, including costs and expenses of notice and administration and all plaintiffs' attorneys' fees, out-of-pocket expenses and costs arising out of this settlement of these actions shall be paid only from the Fund. Settling Defendant and Settling Plaintiffs specifically agree that each will pay for one-half of the cost of publishing notice in The Wall Street Journal as required by the Court. In no event shall the Settling Defendant be obligated to pay more to the Fund than the amount specified in Paragraph C. above.

M. The signatories to this Agreement represent that they are authorized on behalf of their respective parties to take steps contemplated by this Agreement and to effect such settlement on the terms and conditions stated herein. The signatories to this Agreement agree to cooperate in seeking court approval of the settlement contemplated by this Agreement and to use their best efforts to effect its consummation

and to secure the complete and final dismissal of the Settling Defendant from these actions in accordance with the terms and conditions of this Agreement.

N. This Settlement Agreement may be executed in counterparts by the parties hereto.

O. When approved by the Court, this Agreement shall (1) in addition to the Settling Defendant, inure to the benefit of its present or past stockholders, officers, directors, agents, employees, affiliates, subsidiaries, successors, assigns and legal representatives, and (2) inure to the benefit of and be binding upon the parties hereto, each and all of the members of the classes who have not timely excluded themselves, and their respective successors, assigns and legal representatives.

Agreed this day of , 1976.

LEE A. FREEMAN, JR.
Co-Liaison Counsel for Plaintiffs

H. LADDIE MONTAGUE, JR.
Co-Liaison Counsel for Plaintiffs

CHARLES DONELAN
Counsel for Settling Defendant
Ilco Corporation

We accept and approve the above Agreement on behalf of the plaintiffs we represent and designated class members.

H. LADDIE MONTAGUE, JR.
As Counsel for AMHERST LEASING CORPORATION and each named plaintiff listed in Exhibit A attached to the Complaint in the Action entitled Amherst Leasing Corp. v. Emhart Corp., et al.

CITY SOLICITOR
the CITY OF PHILADELPHIA and class members designated in the action brought by the City of Philadelphia

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Approve Settlement Agreement of Defendant Ilco Corporation was served upon all counsel of record by mailing a copy thereof this 22nd day of June, 1976.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
MASTER KEY ANTITRUST LITIGATION	:	M.D.L. DOCKET NO. 45
AMHERST LEASING CORPORATION, et al.	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 14, 234
EMHART CORPORATION, EATON CORPORATION SARGENT & COMPANY and ILCO CORPORATION,	:	
Defendants.	:	

AFFIDAVIT OF MAILING OF LEGAL NOTICE
RE: PROPOSED ILCO SETTLEMENT TO MOTEL, HOTEL, OFFICE BUILDING AND APARTMENT BUILDING CLASS

COMMONWEALTH OF PENNSYLVANIA :
SS
COUNTY OF PHILADELPHIA :

H. LADDIE MONTAGUE, JR., being first duly sworn according to law, deposes and says:

1. I am a member of David Berger, P.A., Attorneys at Law, 1622 Locust Street, counsel for class representative plaintiffs in the matter entitled Amherst Leasing Corporation v. Emhart Corp., Civ. No. 14,234 (D.Conn.) and Co-Liaison Counsel.

2. On June 15, 1976, I caused to be mailed a copy of the Notice attached hereto as Exhibit "A" relating to the proposed Ilco Settlement and the hearing for approval on June 28, 1976, to the following:

(a) To eighty-six (86) counsel who have filed appearances on behalf of class members in the private class (as listed on Exhibit "B" hereto); and

(b) To ninety-four (94) class members and or counsel who have filed requests to be kept informed as to the status of these proceedings (as listed on Exhibit "C" hereto).

H. L. E. Montague

H. LADDIE MONTAGUE, JR.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 24th DAY
OF JUNE, 1976.

Fredalee Shenk

NOTARY PUBLIC

FREDALEE SHENK
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 11, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:	
MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45

NOTICE OF PARTIAL SETTLEMENT

You have previously been notified by Notice of March 29, 1976, of these class actions.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby further notified of a proposed settlement agreement between plaintiffs and defendant Ilco Corporation, which settlement will be presented to the Court for approval on June 28, 1976.

Partial Settlement with Ilco Corporation

Ilco Corporation, a defendant in this litigation, has sales which represent approximately five per cent (5%) of the total sales of contract hardware by all four defendants.

Ilco Corporation has agreed to pay the aggregate amount of Eighty-Five Thousand Dollars ($85,000) in final settlement of all claims against it in this litigation, including the claims of plaintiffs, intervenors and class members.

The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in Twelve (12) monthly installments of Five Thousand Dollars each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from

EXHIBIT A

its parent company, Unican Security Systems, Ltd., a Canadian corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor, and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for 2:00 p.m. , June 28 , 1976 to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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c/o Donald S. Schiller, Pres.
8636 Lyndon
Detroit, Michigan 48238

SOMERSET PROPERTIES CO.
c/o Lawrence A. Berry
2800 Fisher Building
Detroit, Michigan 48202

STANDARD INSURANCE COMPANY
c/o Joel M. McNulty
Assistant Vice Pres & Associate Counsel
P. O. Box 711
Portland, Oregon 97207

NEWS BUILDING COMPANY
c/o Richard L. Nerenberg
220 East Forty Second Street
New York, NY 10017

THE NORTHERN TRUST COMPANY
c/o George Gordey, Manager
Fifty South LaSalle Street
Chicago, IL 60690

NORTHGATE CONSTRUCTION COMPANY, INC.
c/o Robert Decoteau, Controller
393 Totten Pond Road
Waltham, MA 02154

333 NORTH MICHIGAN AVENUE BUILDING
333 Building Corporation
c/o Stephen I. Gonczy, CPM
Building Manager
Chicago, IL 60601

NORTHWESTERN BANK BUILDING COMPANY
c/o G. O. Falkenborg, CPM
Vice President
530 Northwestern National Bank Building
St. Paul, Minnesota 55101

NORTHWESTERN BELL TELEPHONE COMPANY
c/o R. E. Anderson
Engineering Supervisor - Bldgs. & Energy
100 South 19th Street, 610 Dodge Bldg.
Omaha, Nebraska 68102

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	All Cases

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

AFFIDAVIT OF MAILING NOTICE OF PARTIAL SETTLEMENT
(ILCO CORPORATION)

LEE A. FREEMAN, JR., being first duly sworn on oath, deposes and says:

1. I am co-liaison counsel for plaintiffs in the above-captioned litigation and special counsel for the States of Illinois, Indiana, Michigan, Minnesota, Wisconsin, Colorado, South Dakota and West Virginia, and the Commonwealths of Kentucky and Pennsylvania.

2. On June 15, 1976, I caused to be mailed, via first class, postage prepaid, 128 copies of a "Notice of Partial Settlement" (Ilco Corporation) to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings, as provided in this Court's Order of June 11, 1976. A copy of the Notice of Partial Settlement is attached as Exhibit "A" and the mailing lists used for giving notice are attached as Exhibit "B".

3. To supplement mailed notices, I caused the Notice of Partial Settlement to be published in all regional editions of the Wall Street Journal on June 15, 1976, as required by this Court. A copy of the publication is attached as Exhibit "C".

Further the Affiant sayeth not.

LEE A. FREEMAN, JR.

Subscribed and Sworn to before
me this 22nd day of June, 1976.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

NOTICE OF PARTIAL SETTLEMENT

You have previously been notified by Notice of March 29, 1976, of these class actions.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, you are hereby further notified of a proposed settlement agreement between plaintiffs and defendant Ilco Corporation, which settlement will be presented to the Court for approval on June 28, 1976.

Partial Settlement with Ilco Corporation

Ilco Corporation, a defendant in this litigation, has sales which represent approximately five per cent (5%) of the total sales of contract hardware by all four defendants.

Ilco Corporation has agreed to pay the aggregate amount of Eighty-Five Thousand Dollars ($85,000) in final settlement of all claims against it in this litigation, including the claims of plaintiffs, intervenors and class members.

The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in twelve (12) monthly installments of Five Thousand Dollars ($5,000) each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses incurred by plaintiffs.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further, Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from its parent company, Unican Security Systems, Ltd., a Canadian

corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for Monday, June 28, 1976, to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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Exhibit "B"

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THE WALL STREET JOURNAL
Tuesday, June 15, 1976

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

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BEST COPY AVAILABLE

Exhibit "C"

Mr King

RECEIVED JUN 2 1 1976

3623-53-3

50

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

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The settlement sum is to be paid as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in twelve (12) monthly installments of Five Thousand Dollars ($5,000) each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation expenses incurred by plaintiffs.

Ilco Corporation has presented to plaintiffs and to the Court facts evidencing that it is in extremely poor financial condition and that any judgment entered against it in this action would cause the Company to be placed into bankruptcy, rendering such judgment wholly uncollectible. Further, Ilco has represented that it is closing its main plant in Fitchburg, Massachusetts, and that it has terminated its architectural hardware business except for the temporary supplying of replacement parts. In addition, Ilco has represented that it is a wholly-owned subsidiary separate and distinct from its parent company, Unican Security Systems, Ltd., a Canadian

corporation, and that as a matter of law, a judgment against Ilco in this litigation could not be enforced against Unican. The settlement amount has no relation to Ilco's sales but is based solely on its current financial condition.

The fairness and reasonableness of the amount of the settlement is subject to the approval of the Court.

As more fully set forth in the settlement agreement, upon approval of the settlement by the Court, and such approval becoming final, each plaintiff, intervenor and class member which has not elected to be excluded shall be deemed to have covenanted to refrain from proceeding against Ilco Corporation on any claim relating or pertaining to the subject matter of this litigation.

YOU ARE HEREBY NOTIFIED:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the Court"), beginning on June 28, 1976, at 2:00 o'clock p.m., in the North Courtroom of the United States Court House, 450 Main Street, Hartford, Connecticut. The purpose of the hearing is to determine whether the proposed settlement of the pending class actions against Ilco Corporation is fair and adequate. If the settlement is approved, Ilco Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the remaining defendants, Eaton Corporation and Sargent & Company. Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants.

2. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard, and, subject to reasonable limitations by the Court, present evidence at the hearing set for Monday, June 28, 1976, to consider the fairness and adequacy of the proposed settlement with Ilco Corporation and the disbursement of the Settlement Fund.

3. The Settlement Agreement with Ilco Corporation in this litigation (M.D.L. Docket No. 45) may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this Notice should be made to either of the following:

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Lee A. Freeman, Jr.
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545

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	All Cases

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
THE PROPOSED SETTLEMENT WITH ILCO CORPORATION

Plaintiffs have entered into a proposed settlement agreement with Ilco Corporation ("Ilco") under which Ilco agrees to pay the sum of $85,000 as follows:

(i) Twenty-Five Thousand Dollars ($25,000) has been deposited in an escrow account and is earning interest which will be added to the settlement fund.

(ii) The remaining Sixty Thousand Dollars ($60,000) is to be paid in Twelve (12) monthly installments of Five Thousand Dollars each, commencing July 1, 1976, to be drawn on a letter of credit to the First National Bank of Boston.

The settlement funds will be used to defray common litigation costs and thus will not be allocated among the public and private classes. Under the terms of the proposed settlement, Ilco will be dismissed with prejudice as a defendant, but Ilco's sales will remain in the litigation as a basis for liability of the remaining defendants, Eaton Corporation and Sargent and Company.

This settlement is not based upon the relevant transactions of Ilco involved in this litigation (Ilco represents approximately 5-6% of the market), but rather is based solely on the present poor financial condition of Ilco.*/ It has been represented by Ilco and it is believed by plaintiffs that any substantial judgment obtained against Ilco in this litigation will be uncollectable in that it will cause Ilco to be placed into bankruptcy. In support of this, Ilco has made available its relevant financial records, which plaintiffs' counsel have inspected and reviewed. Moreover, Ilco has furnished plaintiffs with a legal memorandum which concludes that, as a matter of law, a judgment against Ilco in this litigation could not be enforced against Ilco's separate parent company, Unican Security Systems, Ltd., a Canadian Corporation.

A Defendant's Inability To Pay A Litigated Judgment Is A Proper Basis For Approving A Class Action Settlement.

As previously stated, the sole basis for this proposed settlement is the poor financial condition of Ilco and their inability to withstand a larger litigated judgment.

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*/On a transaction basis comparable to the Emhart Settlement, Ilco should pay approximately $950,000.

The inability of a defendant to pay is a proper consideration of the Court when approving a settlement. City of Detroit v. Grinnell Corporation, 495 F.2d 448, 467 (2d Cir. 1974), In re National Student Marketing Litigation, 68 F.R.D. 151, 156 (D.D.C. 1974). In Grinnell, supra, the Court recognized that "Common sense seems to dictate the necessity, to say nothing of the propriety, of such a consideration." 495 F.2d at 467. The Court then relied upon Protective Committee v. Anderson, 390 U.S. 414, 424-425 (1968), wherein the Supreme Court cautioned each judge, in evaluating a settlement, "to form an educated estimate of [inter alia]...the possible difficulties of collecting on any judgment which might be obtained...."

Likewise, in the National Student Marketing Litigation, supra, the District Court approved a partial settlement with one financially troubled defendant*/ recognizing the "moving force" behind the settlement was that defendant's "uncertain financial condition." 68 F.R.D. at 155. The Court noted that "too large a recovery after trial might

[illegible] settlement [illegible]

*/The settlement was for 2,050,000 shares of stock in the settling defendant, each share then valued at 5/8's. However, at the time of the settlement, there was only hope, and abounding uncertainty, as to whether the defendant would survive and improve its financial [illegible]ion in the future. 68 F.R.D. at 156, 156 n.10. There was a [illegible]sk that the stock could become worthless.

drive NSMC into bankruptcy, converting any fought for judgment into a mere Pyrrhic victory." 68 F.R.D. at 156.*/

The reasoning of Grinnell and National Student Marketing applies with equal force to the cases sub judice. In addition, here, (i) two solvent defendants remain, (ii) the sales of Ilco remain in the litigation, (iii) what already appears to be a lengthy jury trial with complex issues will be somewhat shortened and simplified by the removal of a defendant which does not have the financial capability to contribute to a final judgment for damages, and (iv) Ilco has agreed to furnish to plaintiffs pertinent information regarding, inter alia, sales and installation of master key systems.

It Is Proper To Apply A Small Partial Class Settlement To Pay Common Litigating Costs

In Wainwright v. Kraftco Corporation, 58 F.R.D. 9 (N.D.Ga. 1973), the court approved a $40,000 settlement with one defendant in a class antitrust action wherein the $40,000 "would be used to reimburse the Atlanta Board of Education [plaintiff-class representative] for expenses incurred by it in prosecuting this litigation on its own behalf and on behalf of the class, with any remainder to be apportioned among the members of the class at the termination of the litigation."

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*/There was additional incentive for the class to accept the NSMC settlement, that being that the class consisted of NSMC shareholders, and a financial recovery by NSMC might rebound indirectly to the benefit of the class.

58 F.R.D. at 11. In approving the settlement, the court noted that

> "Although it is unlikely that, aside from the Atlanta Board of Education, any of the members of the plaintiff class will receive any portion of the $40,000 settlement fund, the fund will be used to further the interests of the class, and the court has heard no objections from the class as to the use of the funds." 58 F.R.D. at 12 [Emphasis added].

Because the amount of the Ilco settlement is comparatively small and because, unlike the Emhart Settlement, there is no basis to make a present allocation among the public and private classes, and because the plaintiffs' expenses in preparation of trial and for the class notice have been and will continue to be substantial, it is respectfully requested that the Ilco funds, if approved, be used to defray these common expenses all of which were and will be incurred for the common benefit of both classes. At the conclusion of the litigation, appropriate allocations of expenses can be made, and credits given, in accordance with the recommendations of counsel and approval by the Court. */

Some counsel for absent class members have questioned the basis for allocation of expenses among the classes. While plaintiffs' liaison counsel presently intend to recommend at

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*/If successful at trial, costs may be assessed against the non-settling defendants (15 U.S.C. §15), thus, the expenses paid from the Ilco Settlement might be reimbursed to the fund for distribution to the classes in accordance with a plan of allocation approved by the Court.

the appropriate time, subject to Court Approval, that reimbursement of expenses (including class notices and administrative expenses) be made from all settlement funds and recovery funds prior to final allocation between the classes for distribution, this is not the appropriate time to make such determination.

CONCLUSION

For the foregoing reasons, plaintiffs' liaison counsel and all other plaintiffs' counsel recommend to this Court that the proposed Ilco settlement is fair and reasonable.

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CERTIFICATE OF SERVICE

I, H. LADDIE MONTAGUE, JR., certify that I have this 23rd day of June, 1976, served a copy of the foregoing Memorandum on those attorneys appearing on the following list of counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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H. LADDIE MONTAGUE, JR.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

553

IN RE:	:	M.D.L. Docket No. 45
	:	
MASTER KEY ANTITRUST LITIGATION	:	All Cases

STIPULATION OF DISMISSAL OF EMHART CORPORATION

Pursuant to this Court's Memorandum Of Decision dated June 14, 1976, the Settlement Agreement dated June 26, 1975 between counsel for plaintiffs and counsel for Emhart Corporation, and Rule 41 of the Federal Rules of Civil Procedure, all plaintiffs in all actions encompassed within this consolidated proceeding and Emhart Corporation, by their attorneys duly authorized, hereby stipulate that all actions encompassed within this consolidated proceeding may be and hereby are dismissed as to defendant Emhart Corporation, with prejudice.

ALL PLAINTIFFS

By _____
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By _____
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DEFENDANT EMHART CORPORATION

By _____
Ralph C. Dixon
DAY, BERRY & HOWARD
One Constitution Plaza
Hartford, CT. 06103

DATED: June , 1976

CERTIFICATE OF SERVICE

I, H. LADDIE MONTAGUE, JR., certify that I have this 23rd day of June, 1976, served a copy of the foregoing Stipulation of Dismissal on those attorneys appearing on the following list of counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

554

IN RE:	:	M.D.L. Docket No. 45
	:	
MASTER KEY ANTITRUST LITIGATION	:	All Cases

MOTION OF ALL PLAINTIFFS AND DEFENDANT EMHART CORPORATION FOR DIRECTION OF ENTRY OF FINAL JUDGMENT AS TO EMHART CORPORATION PURSUANT TO RULE 54(b), FED. R. CIV. P.

All plaintiffs and defendant Emhart Corporation, by their counsel duly authorized, respectfully move that the Court make the express determination that there is no just reason for delay and expressly direct and order that final judgment of dismissal with prejudice be entered as to defendant Emhart Corporation in all cases encompassed within this consolidated proceeding, all pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Counsel for all plaintiffs and counsel for defendant Emhart Corporation entered into a Settlement Agreement dated June 26, 1975, which has been filed with the Court and which, after hearing on June 2, 1976, was approved by this Court in its Memorandum Of Decision of June 14, 1976. Said hearing and said approval followed notice to the classes pursuant to Rule 23 of the Federal Rules of Civil Procedure and this Court's Order With Respect To The Giving Of Class Action Notices, dated March 3, 1976.

All plaintiffs and defendant Emhart Corporation, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, are filing a Stipulation of Dismissal, dismissing all actions

as to Emhart Corporation, with prejudice. Other defendants remain in this consolidated proceeding, and trial on the issue of liability is scheduled to commence in September of 1976.

There is no just reason for delay, and accordingly it is respectfully requested that the within Motion be granted. A proposed Order of Approval of Settlement and Final Judgment of Dismissal of Emhart Corporation With Prejudice is attached as Exhibit A.

ALL PLAINTIFFS

By _____
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DEFENDANT EMHART CORPORATION

By _____
Ralph C. Dixon
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One Constitution Plaza
Hartford, CT. 06103

DATED: June , 1976

EXHIBIT A

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:	:	M.D.L. Docket No. 45
	:	
MASTER KEY ANTITRUST LITIGATION	:	All Cases

ORDER OF APPROVAL OF SETTLEMENT AND FINAL JUDGMENT OF DISMISSAL OF EMHART CORPORATION WITH PREJUDICE

All plaintiffs in all actions within this consolidated proceeding having entered into a Settlement Agreement with defendant Emhart Corporation dated June 26, 1975 and filed with this Court; and notices to the members of the classes provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved in these actions by this Court's Ruling On Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60,377 (D. Conn. 1975), appeal dismissed, ___ F.2d __ (2d Cir. 1975), having been mailed and published on or before March 29, 1976 in accordance with this Court's Order With Respect To The Giving Of Class Action Notices, dated March 3, 1976, all of which are incorporated by reference as though fully set forth herein; and members of those classes having been informed by the terms of those notices of the proposed settlement with Emhart Corporation and dismissal of these actions with prejudice as to Emhart Corporation, and that they might appear at a hearing on June 2, 1976 if they wished to object to the proposed settlement; and the Court having held such hearing on June 2, 1976 and having heard interested persons with respect to whether the proposed

settlement was fair, adequate, reasonable and equitable, and the Court having issued its Memorandum of Decision of June 14, 1976; and the parties to such proposed settlement having stipulated th the Court may, if it approves the proposed settlement, make all such determinations and orders as it may deem necessary or prope for the implementation and consummation of such proposed settlement; and the parties to the proposed settlement having filed a Stipulation of Dismissal, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, dismissing all actions as to Emhart Corporation, with prejudice;

NOW, THEREFORE:

The Court hereby finds, pursuant to Rule (23(c)(2) of the Federal Rules of Civil Procedure, that the notice directed to class members was the best notice practicable under the circumstances and that it included individual notice to all class members who could be identified through reasonable effort. The forms of notice used in each action advised each class member that: (A) the Court would exclude him from the class in that action if he so requested by a specified date; (b) any judgment in that action would include all class members who did not request exclusion; and (C) any member of the class who did not request exclusion might, if he desired, enter an appearance through his counsel. The Court further finds that the lists prepared for and the mailing of notices (Affidavit of Mailing Notice to Public Entities of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware of Karol K. Gibbs, dated April 27, 1976; Affidavit of Mailing of Jack M. Jos

dated April 27, 1976 and exhibits thereto; Mailing List for Giving Notice, dated March 29, 1976, of Peter K. Shack, Deputy Attorney General of the State of California; Notice of Filing Mailing List for Giving Notice, dated March 23, 1976, of Reid F. Holbrook, Special Assistant Attorney General of the State of Kansas; Mailing of Notice of Class Action and Partial Settlement, dated March 29, 1976, of Thomas H. Brill, Assistant Attorney General of the State of Kansas; Affidavit of Mailing of Legal Notice, dated March 30, 1976, of Alison B. Swan, attorney for the State of Arizona; Mailing List For Giving Notice, dated March 17, 1976, of Alison B. Swan, Assistant Attorney General of the State of Arizona; Mailing of Notice of Class Action and Partial Settlement, dated March 26, 1976, of Norris L. O'Neill, Attorney for the State of Connecticut; Notice of Filing and Certificate of Mailing Notice of Class Action and Partial Settlement, both dated March 23, 1976, of Ronald J. Bloomfield, Assistant Attorney General of the State of New York; Designation of Mailing Lists for Class Action Notice, dated August 27, 1975, of Ronald Wiseman, Assistant Attorney General of the State of Ohio; and Affidavit of Mailing of Legal Notice to Motel, Hotel, Office Building and Apartment Building Class, and Exhibits thereto, dated May 14, 1976, of H. Laddie Montague, Jr., Co-Liaison Counsel for Plaintiffs) were the most complete and accurate lists of class members which could be prepared through reasonable effort, and the Court further finds that notice was given by publication on March 29, 1976, in all regional editions of the Wall Street Journal.

The Court further finds, pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, that notice pursuant to

Rule 23(c)(2) has been directed to all those persons and entities described as members of the respective classes provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved by this Court's Ruling On Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60,377 (D. Conn. 1975), appeal dismissed, ___ F.2d ___ (2d Cir. 1975), and that all persons and entities so described who are not listed on Exhibit A of Affidavit Re: Exclusions From Private-Builders' Class Action, dated May 14, 1976 of H. Laddie Montague, Jr., or Lists of Class Members That Have Requested Exclusion From The Class Actions on Behalf of Public Entities, dated May 13, 1976 as having requested exclusion from the classes, which Affidavit and which Lists are hereby incorporated by reference as though fully set forth herein, are members of the classes established in these actions and are fully bound by this judgment as though they were named parties to these actions.

The Court further finds, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and on the basis of the terms and conditions of the Settlement Agreement and the Court's familiarity with the legal and factual issues raised by these actions, that the proposed settlement is fair, adequate, reasonable and equitable with respect to all parties and class members.

The Court expressly determines that there is no just reason for delay and that final judgments dismissing these actions as to Emhart Corporation with prejudice should be entered immediately.

IT IS HEREBY ORDERED, ADJUDGED AND EXPRESSLY DIRECTED:

1. The proposed settlement of these actions by Emhart Corporation on the terms and conditions set forth in the Settlement Agreement dated June 26, 1975 and filed with this Court is hereby confirmed as fair, adequate, reasonable and equitable and approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2. These actions are hereby dismissed as to Emhart Corporation with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

3. This judgment, dismissing each of the actions as to Emhart Corporation with prejudice, shall be final and shall be entered as of this date, in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

Dated at Hartford, Connecticut this day of June, 1976.

ENTER:

M. Joseph Blumenfeld
United States District Judge

CERTIFICATE OF SERVICE

I, H. LADDIE MONTAGUE, JR., certify that I have this 23rd day of June, 1976, served a copy of the foregoing Motion on those attorneys appearing on the following list of counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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H. LADDIE MONTAGUE, JR.

0623-053-3

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED
JUN 29 9 11 AM '76
U.S. DISTRICT COURT
HARTFORD

IN RE:	MDL DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	(All Cases)
	June 25, 1976

OBJECTORS' OPPOSITION TO THE MOTION FOR THE ENTRY OF A FINAL RULE 54(b) FINAL JUDGMENT AS TO EMHART CORPORATION

Exxon Corporation, et al. ("Objectors") oppose the motion filed by plaintiffs and settling defendant for the direction of the entry of a final judgment as to Emhart Corporation ("Emhart") pursuant to Rule 54(b) of the Federal Rules of Appellate Procedure. At the outset, Rule 54(b) provides for an exception to the general policy of avoiding piecemeal appeals in a multi-party action such as the instant litigation. Particularly in a settled case, in which the classes' representative plaintiffs and the settling defendant will not seek appellate review of any issue, it is singularly inappropriate to resort to the extraordinary provisions of Rule 54(b).

This Court's Memorandum of Decision of June 14, 1976, approving the Emhart settlement proposal, concluded as follows: "The actions against...Emhart...may be dismissed upon the filing of an executed copy of the stipulation". Accordingly, on June 23, 1976, plaintiffs' liaison counsel served on Objectors an undated Stipulation Of Dismissal Of Emhart Corporation which presumably has been filed with this Court, and apparently the action against Emhart has now been dismissed with prejudice. Hence, Emhart has no standing to seek a Rule 54(b) final judgment. Likewise,

plaintiffs' liaison counsel voluntarily entered into the settlement agreement with Emhart which this Court approved, and they have no standing to seek appellate review of any issue relating to the settlement they sponsored in this Court.

As this Court is well aware, however, certain Objectors to the settlement proposal containing the arbitrary and non-supportable premature plan of allocation have raised certain basic issues concerning the fairness of the settlement as approved by this Court, although the amount of the settlement has not been opposed. Additionally, the Notice to the Class in this litigation provides that petitions seeking "20% of the recovery as fees" would be filed even though the Court of Appeals for this Circuit unanimously rejected the "contingent fee syndrome" in reversing a fee award based on a percentage of the recovery in City of Detroit v. Grinnell Corporation, 495 F.2d 448 (2d Cir. 1974).[1/] Therefore, it is possible that if this Court grants the request of plaintiffs' liaison counsel for a percentage of the recovery as a fee award, appellate review might be taken with respect to both the Memorandum Of Decision of June 14, 1976, approving the settlement and any subsequent fee award. Under these circumstances, and the policy of this Circuit as set forth in Grinnell, supra, any challenges to the fairness of the allocation provision of the Emhart settlement and to any fee award made from the proceeds of that same settlement should be decided in the same appeal.

1/ In Grinnell, supra, separate appeals were taken challenging the fairness of the settlement and the fee award made from the settlement proceeds. The Court of Appeals heard simultaneous argument on both issues and disposed of both matters in the same decision.

Moreover, the provisions of Rule 54(b) are simply inapposite to Emhart's dismissal from this action with prejudice. Because neither plaintiffs nor defendants have standing to appeal any issue in the settlement they entered into, only Objectors are in the position to raise any issues on appeal. Therefore, the provision of Rule 54(b) providing for the entry under certain circumstances of a final judgment when claims pertaining to one party in a multiple-party action has been resolved is not applicable. In short, the $7.5 million settlement offer sponsored by the movants was, in fact, approved by this Court as fair, and none of the movants seeking the entry of a final judgment pursuant to Rule 54(b) can claim any prejudice if the Court properly exercises its discretion and denies the motion. On the other hand, if confronted with the prospect of piecemeal appeals from this and possibly other settlements or facets thereof, material prejudice will be inflicted on those adversely affected such as Objectors or other private builder-owners.

The case law makes it manifestly clear that it would be inappropriate for this Court to direct the entry of a Rule 54(b) judgment. In Campbell v. Westmoreland Farm, Inc., 413 F.2d 939, 942 (2d Cir. 1968), the Court of Appeals gave the following admonition:

> '[Rule 54(b)] orders should not be entered routinely or as a courtesy or accommodation to counsel. The power which this Rule confers upon the trial judge should be used only "in the infrequent harsh case" as an instrument for the improved administration of justice . . .'. (Citations omitted.)

This language was also quoted favorably more recently in Allis-Chalmers Corp. v. Philadelphia Electric Co., 521 F.2d 360 (3rd Cir. 1975). In Allis-Chalmers, the appeal was dismissed

for lack of a competent Rule 54(b) certification, and the Court held that the District Court must make an "independent analysis of the factors which led it to certify its . . . order as final". Id. at 365. The Court set forth with specificity the factors which the District Court must address and which must be considered in reviewing Rule 54(b) certifications, including "the possibility that the reviewing court might have to consider the same issue a second time". Id. at 364. Here, in view of the prospect that other settlements might contain arbitrary plans of allocation, the entry of a final judgment as to Emhart would in fact result in piecemeal appeals. See also, Gumer v. Shearson, Hammill & Co., Inc., 516 F.2d 283, 285 (2d Cir. 1974).

In Gumer, supra, the Court of Appeals specifically warned the District Courts of this Circuit that rather than just reciting the conclusory language of the Rule, a direction that a final judgment be entered against less than all parties in a multiple-defendant action must be accompanied by a "reasoned statement" of the factors underlying the exercise of the trial judge's discretion. More recently, these requirements were further articulated and made more specific in Allis-Chalmers, supra. Under the circumstances of this litigation, the requirements of the case law as to the particularity with which the District Court must set forth its reasons to justify the entry of a Rule 54(b) final judgment as to Emhart Corporation cannot be met.

For all of the foregoing reasons and in the interests of justice and fairness, it is respectfully submitted that this joint motion for the entry of a Rule 54(b) final judgment as to settling defendant Emhart Corporation should be denied.

Respectfully submitted,

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G. JOSEPH KING
HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Counsel for Objectors
Exxon Corporation, et al.

Dated: June 25, 1976

CERTIFICATE OF SERVICE

I, G. Joseph King, certify that I have this 25th day of June, 1976, served a copy of the foregoing Opposition To The Motion For The Entry Of A Rule 54(b) Final Judgment As To Emhart Corporation on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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[illegible]

[illegible]

G. Joseph King

[illegible]

[illegible]

[illegible]

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:	:	M.D.L. Docket No. 45
MASTER KEY ANTITRUST LITIGATION	:	All Cases

ORDER OF APPROVAL OF SETTLEMENT AND FINAL JUDGMENT OF DISMISSAL OF EMHART CORPORATION WITH PREJUDICE

All plaintiffs in all actions within this consolidated proceeding having entered into a Settlement Agreement with defendant Emhart Corporation dated June 26, 1975 and filed with this Court; and notices to the members of the classes provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved in these actions by this Court's Ruling On Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60,377 (D. Conn. 1975), appeal dismissed, ___ F.2d __ (2d Cir. 1975), having been mailed and published on or before March 29, 1976 in accordance with this Court's Order With Respect To The Giving Of Class Action Notices, dated March 3, 1976, all of which are incorporated by reference as though fully set forth herein; and members of those classes having been informed by the terms of those notices of the proposed settlement with Emhart Corporation and dismissal of these actions with prejudice as to Emhart Corporation, and that they might appear at a hearing on June 2, 1976 if they wished to object to the proposed settlement; and the Court having held such hearing on June 2, 1976 and having heard interested persons with respect to whether the proposed

settlement was fair, adequate, reasonable and equitable, and the Court having issued its Memorandum of Decision of June 14, 1976; and the parties to such proposed settlement having stipulated that the Court may, if it approves the proposed settlement, make all such determinations and orders as it may deem necessary or proper for the implementation and consummation of such proposed settlement; and the parties to the proposed settlement having filed a Stipulation of Dismissal, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, dismissing all actions as to Emhart Corporation, with prejudice;

NOW, THEREFORE:

The Court hereby finds, pursuant to Rule (23(c)(2) of the Federal Rules of Civil Procedure, that the notice directed to class members was the best notice practicable under the circumstances and that it included individual notice to all class members who could be identified through reasonable effort. The forms of notice used in each action advised each class member that: (A) the Court would exclude him from the class in that action if he so requested by a specified date; (b) any judgment in that action would include all class members who did not request exclusion; and (C) any member of the class who did not request exclusion might, if he desired, enter an appearance through his counsel. The Court further finds that the lists prepared for and the mailing of notices (Affidavit of Mailing Notice to Public Entities of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware of Karol M. Gibbs, dated April 27, 1976; Affidavit of Mailing of Jack M. Joss

dated April 27, 1976 and exhibits thereto; Mailing List for Giving Notice, dated March 29, 1976, of Peter K. Shack, Deputy Attorney General of the State of California; Notice of Filing Mailing List for Giving Notice, dated March 23, 1976, of Reid F. Holbrook, Special Assistant Attorney General of the State of Kansas; Mailing of Notice of Class Action and Partial Settlement, dated March 29, 1976, of Thomas H. Brill, Assistant Attorney General of the State of Kansas; Affidavit of Mailing of Legal Notice, dated March 30, 1976, of Alison B. Swan, attorney for the State of Arizona; Mailing List For Giving Notice, dated March 17, 1976, of Alison B. Swan, Assistant Attorney General of the State of Arizona; Mailing of Notice of Class Action and Partial Settlement, dated March 26, 1976, of Norris L. O'Neill, Attorney for the State of Connecticut; Notice of Filing and Certificate of Mailing Notice of Class Action and Partial Settlement, both dated March 23, 1976, of Ronald J. Bloomfield, Assistant Attorney General of the State of New York; Designation of Mailing Lists for Class Action Notice, dated August 27, 1975, of Ronald Wiseman, Assistant Attorney General of the State of Ohio; and Affidavit of Mailing of Legal Notice to Motel, Motel, Office Building and Apartment Building Class, and Exhibits thereto, dated May 14, 1976, of H. Laddie Montague, Jr., Co-Liaison Counsel for Plaintiffs) were the most complete and accurate lists of class members which could be prepared through reasonable effort, and the Court further finds that notice was given by publication on March 29, 1976, in all regional editions of the Wall Street Journal.

The Court further finds, pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, that notice pursuant to

Rule 23(c)(2) has been directed to all those persons and entities described as members of the respective classes provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved by this Court's Ruling On Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60,377 (D. Conn. 1975), appeal dismissed, ___ F.2d ___ (2d Cir. 1975), and that all persons and entities so described who are not listed on Exhibit A of Affidavit Re: Exclusions From Private-Builders' Class Action, dated May 14, 1976 of H. Laddie Montague, Jr., or Lists of Class Members That Have Requested Exclusion From The Class Actions on Behalf of Public Entities, dated May 13, 1976 as having requested exclusion from the classes, which Affidavit and which Lists are hereby incorporated by reference as though fully set forth herein, are members of the classes established in these actions and are fully bound by this judgment as though they were named parties to these actions.

The Court further finds, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and on the basis of the terms and conditions of the Settlement Agreement and the Court's familiarity with the legal and factual issues raised by these actions, that the proposed settlement is fair, adequate, reasonable and equitable with respect to all parties and class members.

The Court expressly determines that there is no just reason for delay and that final judgments dismissing these actions as to Emhart Corporation with prejudice should be entered immediat

IT IS HEREBY ORDERED, ADJUDGED AND EXPRESSLY DIRECTED:

1. The proposed settlement of these actions by Emhart Corporation on the terms and conditions set forth in the Settlement Agreement dated June 26, 1975 and filed with this Court is hereby confirmed as fair, adequate, reasonable and equitable and approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2. These actions are hereby dismissed as to Emhart Corporation with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

3. This judgment, dismissing each of the actions as to Emhart Corporation with prejudice, shall be final and shall be entered as of this date, in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

Dated at Hartford, Connecticut this 29th day of June, 1976.

ENTER:

M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

JUN 30 1976

ARTFORD

950

52 6/29

562

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

MDL DOCKET NO. 45
(ALL CASES)
June 24, 1976

MOTION FOR JOINDER
IN OBJECTORS' MOTION FOR RECONSIDERATION

Pursuant to Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure, the Home Builders Association of Metropolitan Pittsburgh, et al ("Objectors"), hereby joins in the Motion of Exxon Corporation for Reconsideration to vacate an Order of this Honorable Court of June 14, 1976, approving the arbitrary 80%-20% allocation provision of the compromise of the classes' claims against the Emhart Corporation ("Emhart"). The Objector hereunder hereby incorporates by reference and adopts, generally, the averments and contentions as set forth in Exxon Corporation's Motion for Reconsideration dated June 22, 1976, and, in addition, avers:

1. The Home Builder's Association of Metropolitan Pittsburgh (hereinafter called "Association"), is a non-profit corporation, duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is a trade association with a wide membership in the entire building trades industry in Western Pennsylvania. Said Association has over five hundred (500) active members, each representing a company that is a claimant or potential claimant to this fund.

2. The Association, on behalf of its membership, has reviewed the proposed allocation formula for the disbursement of the Emhart settlement fund and has determined that the same does not represent a fair allocation of the proceeds of said settlement as related to the actual market conditions of sale.

3. The Association, on behalf of its membership, most of whom are claimants or potential claimants to share in this fund would deem it in the best interest of all parties and potential claimants that the propriety of the adoption of this formula for distribution be reconsidered.

For the reasons above stated and those particularly set forth in Exxon Corporation's Motion for Reconsideration with attached Affidavit, above referred to, it is respectfully requested that this Court's Order and Memorandum of Decision of June 14, 1976, should be vacated, particularly with respect to the proposed allocation provision for the distribution of the settlement fund as between public and private claimants and that the right to establish a new formula be considered.

Respectfully submitted,

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806 Frick Building
Pittsburgh, Pa. 15219
Attorney for the Builder's
Association of Metropolitan
Pittsburgh

Dated: June 24, 1976

CERTIFICATE OF SERVICE

I, Paul R. Hirschfield, Esq., certify that I have this 24th day of June, 1976, served a copy of the foregoing Motion on the following counsel, pursuant to Rule 6 of the Rules of Procedure of this Court.

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562a

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:

MASTER KEY ANTITRUST LITIGATION

MDL DOCKET NO. 45
(MDL CASES)
June 24, 1976

FILED
AUG 3 2 05 PM '76
U.S. DISTRICT COURT
HARTFORD, CONN.
CLERK

MOTION FOR JOINDER IN OBJECTORS' MOTION FOR RECONSIDERATION

Pursuant to Rules 52(b) and 59(e) of the Federal Rule Civil Procedure, the Home Builders Association of Metro Pittsburgh, et al ("Objectors"), hereby joins in the Motio Exxon Corporation for Reconsideration to vacate an Ord of Honorable Court of June 14, 1976, approving the arbitr y 20% allocation provision of the compromise of the classes' against the Emhart Corporation ("Emhart"). The Object h under hereby incorporates by reference and adopts, gen al the averments and contentions as set forth in Exxon Corpor Motion for Reconsideration dated June 22, 1976, and, i ad avers:

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2. The Association, on behalf of its membership, s viewed the proposed allocation formula for the disbursement the Emhart settlement fund and has determined that the me not represent a fair allocation of the proceeds of said et ment as related to the actual market conditions of sale.

3. The Association, on behalf of its membership, most whom are claimants or potential claimants to share in this would deem it in the best interest of all parties and p en claimants that the propriety of the adoption of this formul distribution be reconsidered.

AUG 3 4 22 PM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

Denied on merits filed - The members of Reconsideration Committee,
J-3-76 M.T.S. USDJ

AUG 3 4 22 PM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

AUG 3 1976

353

LOST JOB REPORTS

MASTER KEY CASE STATISTICS

TYPE OF USER

DESCRIPTION OF STATISTIC	NUMBER	PERCENT OF TOTAL
PRIVATE HOSPITAL	9	0,80
PRIVATE SCHOOL	5	0,45
PRIVATE COLLEGE	8	0,71
PRIVATE HOUSING - APT	6	0,54
HOTEL, MOTEL	15	1,34
PRIVATE-OTHER	31	2,77
OFFICE BUILDING	89	7,94
GEN. FACTORY	14	1,25
PUBLIC HOSPITAL	121	10,79
PUBLIC SCHOOL	371	33,10
PUBLIC COLLEGE	229	20,43
PUBLIC HOUSING	52	4,64
MUNICIPAL BUILDING	33	2,94
COUNTY BUILDING	15	1,34
STATE BUILDING	7	0,62
QUASI-GOVERNMENT AGENCY	1	0,09
PUBLIC OTHER	95	8,47
FEDERAL BUILDING	20	1,78
DATA NOT AVAILABLE	0	0,00
TOTAL	1121	100,00

BEST COPY AVAILABLE

27-JUL-76

MASTER KEY CASE STATISTICS

LOST JOB ANALYSIS

TOTALS

DESCRIPTION OF STATISTIC	PRIVATE		PUBLIC		TOTAL	
NUMBER OF JOBS	177	100,0%	944	100,0%	1,121	100,0%
NUMBER OF JOBS WITH 2 BIDS	94	53,1%	400	42,4%	494	44,1%
NUMBER OF JOBS WITH 3 BIDS	51	28,8%	278	29,4%	329	29,3%
NUMBER OF JOBS WITH 4 BIDS	22	12,4%	149	15,8%	171	15,3%
NUMBER OF JOBS WITH MORE THAN 4 BIDS	10	5,6%	117	12,4%	127	11,3%
AVERAGE NUMBER OF BIDS PER JOB	2,72		3,03		2,98	
AVERAGE % DIFFERENCE BETWEEN HIGH & LOW BID	16,19%		88,34%		77,26%	
NUMBER	177		944		1,121	
AVERAGE YALE MARKUP %	14,79%		15,19%		15,12%	
NUMBER	149		792		941	
AVERAGE LOW BID MARKUP % (*)	2,93%		3,49%		3,40%	
NUMBER	149		792		941	
AVERAGE HIGH BID MARKUP % (*)	21,56%		19,20%		19,57%	
NUMBER	146		792		941	

(*) - MARKUP BASED UPON YALE COST.

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(565)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M. D. L. DOCKET NO. 45 All Cases

MEMORANDUM OF LAW ON THE LIABILITY OF A PARENT CORPORATION FOR DEBTS OR ACTS OF SUBSIDIARY

The general rule is that a stockholder is not liable for the debts or acts of the corporation, in the absence of statute or agreement, and the same is true where the stockholder is a parent company and the corporation is a subsidiary. The mere ownership by one corporation of stock in another corporation, even of a controlling interest, does not itself make the parent liable for the debts or acts of the corporation in which it holds stock. Fletcher, Cyclopedia Corporations, Perm. Ed. 1961, § 6222. This rule, of course, is based on the well-settled legal proposition that a corporation is a distinct legal entity, separate from the members who compose it.

The Massachusetts courts have consistently adhered to the general rule. My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. 614 (1968); Manufacturing Improvement Corp. v. Georgia Pacific Corp., 286 N.E. 2d 339 (Mass.1972); Gordon Chemical Co., Inc. v. Aetna Casualty & Surety Co., 358 Mass. 632 (1971); Commonwealth v. Beneficial Finance Company, 360 Mass. 188, 289 (1971); Westcott Construction Corp. v. Cumberland Construction Co., 1975 Mass. App. Ct. Adv. Sh. 755.

The general rule is subject to the exception that liability of a parent corporation for the debts or acts of a subsidiary may

exist where more than the mere relationship of the two corporations is involved. In such a case it is said that the corporate entity may be disregarded. Fletcher, Cyclopedia Corporations, § 6222. Although no fixed rule for disregarding separate corporate entities can be laid down, the Massachusetts courts have said that such additional facts may exist

> when there is active and direct participation by the representatives of one corporation, apparently exercising some form of pervasive control, in the activities of another and there is some fraudulent or injurious consequences of the intercorporate relationship, or when there is a confused intermingling of activity of two or more corporations engaged in a common enterprise with substantial disregard of the separate nature of the corporate entities or serious ambiguity about the manner and capacity in which the various corporations and their respective representatives are acting. My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. at 619.

Such factors may "permit the conclusion that an agency or similar relationship exists between the parties." id.

Another formulation of the same rule may be found in the My Bread case:

> Where there is common control of a group of separate corporations engaged in a single enterprise, failure (a) to make clear which corporation is taking action in a particular situation and the nature and extent of that action, or (b) to observe with care the formal barriers between the corporations with a proper segregation of their separate businesses, . . . records and finances, may warrant some disregard of the separate entities in rare particular situations in order to prevent gross inequity.

Still another variation of the rule may be found in Commonwealth v. Beneficial Finance Company, supra, where the Supreme Judicial Court of Massachusetts quoted with approval the following statement from U. S. v. Brown & Sharpe Mfg. Co., 141 F. Supp. 520, 526 (D.R.I. 1956):

> [W]here [in addition to a corporation's ownership of the capital stock of a subsidiary] it is also shown that the business conducted by the subsidiary

> is a part of the business of the parent corporation, and where such ownership of stock in a subsidiary is employed not for the purpose of participating in the affairs of the subsidiary in a manner normal and usual with stockholders but for the purpose of making it a mere agent or department of the parent corporation, the courts will look through the form to the realities of the relation between the corporations and will hold that in such cases the subsidiary is a mere agent or department for carrying on the business of the parent corporation. 360 Mass. at 291-292.

In the Beneficial Finance Company case, the court acknowledged that

> the law is well settled that the parent's ownership of the entire stock of its subsidiary as well as control over the latter's affairs do not, without more, warrant treating two separate and distinct entities identically.
>
> 360 Mass. at 289

Assuming, based on the foregoing rules, there is sufficient control or other factors to warrant disregarding the corporate distinctness between a parent and its subsidiary, "it must be kept in mind that the control must be shown to have been exercised at the time the acts complained of took place in order that the entities be disregarded at the time. Moreover the control and breach of duty must proximately cause the injury of unjust loss for which the complaint is made." Fletcher, Cyclopedia Corporations, §43. In the words of the Fifth Circuit, applying Alabama law,

> . . . two elements are essential for liability under the "instrumentality" doctrine. First, the dominant corporation must have controlled the subservient corporation, and, second, the dominant corporation must have proximately caused plaintiff harm through misuse of this contract.
> Krivo Industrial Supply Co. v. National Distillers and Chemical Corp., 483 F. 2d 1098, 1103 (5th Cir. 1973).

In Berger v. Columbia Broadcasting System, Inc., 453 F. 2d 991 (5th Cir. 1972), the Fifth Circuit had occasion to consider the applicability of the "instrumentality doctrine" under New York law. The court quoted the following elements from Lowendahl v. Baltimore & O. R.R., 247 App. Div. 144, 287 N.Y.S. 62 (1936), as necessary to

sustain application of the rule:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
>
> 287 N.Y.S. at 76.

453 F. 2d at 995.

Applying the rule in Berger and rejecting liability, the court noted that the evidence relied upon by the plaintiff to establish the requisite domination "relates to the present-day relationship between the defendant [parent company] and its wholly-owned subsidiary, and New York law requires that 'the unlawful control must be shown to have been exercised at the time the acts complained of took place' [citing Lowendahl]." 453 F. 2d at 997 (Emphasis added). "Furthermore," said the court, "the only evidence concerning the corporate relationship during the period in which the transaction involved herein occurred negates any assertion that [the subsidiary] operated as the alter ego of the defendant." Id. (Emphasis added).

Similarly, the Massachusetts cases cited above all involved circumstances where the issue of control was contemporaneous with the acts complained of.

Respectfully submitted,

ILCO CORPORATION

By Charles Donelan

Charles Donelan, Esq.
Bowditch & Lane
Its Attorneys
311 Main Street
Worcester, Mass. 01608
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3623-53-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

566

IN RE:
MASTER KEY ANTITRUST LITIGATION

M. D. L. DOCKET NO. 45
All Cases

COMMONWEALTH OF MASSACHUSETTS)
) SS:
COUNTY OF WORCESTER)

AFFIDAVIT

HENRY B. DEWEY, being first duly sworn according to law, on oath deposes and says,

1. I am Secretary of Ilco Corporation and have knowledge of the proceedings, circumstances and facts involved in the proposed settlement of Ilco Corporation.

2. I have been advised by Charles Donelan, trial counsel for Ilco in this litigation, that on March 22, 1976 co-liaison counsel for plaintiffs, Lee A. Freeman, Jr. and H. Laddie Montague, Jr., were furnished with the following audited financial statements of Ilco Corporation: Consolidated Financial Statements of Ilco Corporation and Subsidiaries as of December 31, 1969; Consolidated Financial Statements of Ilco Corporation and Subsidiaries as of December 31, 1970; Consolidated Financial Statements of Ilco Corporation and Subsidiaries as of December 31, 1971; Financial Statements of Ilco Corporation and Subsidiaries for Six Months Ended June 30, 1972; Financial Statements of Ilco Corporation and Subsidiaries as of December 30 1974 and 1973; Financial Statements of Ilco Corporation as of June 30, 1975 and 1974; and an unaudited Financial Statement of Ilco Corporation and Subsidiaries for Six Months Ended December 31, 1972.

The financial condition of Ilco has not materially

improved since the furnishing of these financial statements.

3. In January, 1972 Unican Security Systems, Ltd., a Canadian corporation, acquired and presently owns a majority of each class of the stock of Ilco. The agreement for the purchase of Ilco stock by Unican did not provide for the assumption by Unican of any debts or liabilities of Ilco, and Unican was informed of the existence of the present litigation. After the acquisition, Ilco continued to operate as a corporate entity separate and distinct from its parent Unican.

4. Substantially all of Ilco's assets have been pledged.

5. The Company's Board of Directors has authorized the closing of Ilco's main plant in Fitchburg. Ilco has terminated its architectural hardware business except for the temporary supplying of replacement parts.

6. Ilco's collective bargaining agreement with the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 290, expires on June 30, 1976, and Ilco has given notice to the Union that the Fitchburg plant is being closed. There are presently approximately 80 working employees in the bargaining unit and 20 non-bargaining unit employees.

7. Ilco presently owes its attorneys, Bowditch & Lane, Worcester, Massachusetts, in excess of $70,000 for legal services rendered.

Henry B. Dewey

Subscribed and sworn to before me this 28th day of June, 1976,

Raymond T. Mahon
Notary Public

RAYMOND T. MAHON
NOTARY PUBLIC
MY COMMISSION EXPIRES
MAY 24, 1979

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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IN RE:
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MASTER KEY M.D.L. #45
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ANTITRUST LITIGATION
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JUNE 28, 1976
HARTFORD, CONNECTICUT

B E F O R E:
HON. M. JOSEPH BLUMENFELD, U.S.D.J.

A p p e a r a n c e s:

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THE COURT: This is a hearing on a motion to approve a settlement agreement between the plaintiffs and Ilco.

MR. DONELAN: Good afternoon, your Honor.

THE COURT: Good afternoon.

Do you want to be heard, Mr. Donelan?

MR. DONELAN: Yes, your Honor.

My name is Charles Donelan. I am here on behalf of the defendant, Ilco Corporation, with James E. Wallace, Jr., my co-counsel and partner.

I have the dubious honor of being the first target. I see that our friends from the south have rejoined us. Mr. Freeman has learned, I guess, from the last time, to put me up first now. But that's all right.

I have an affidavit first to file with the Court, if I may, as promised.

THE COURT: Right.

MR. DONELAN: It is from the Secretary of the Ilco Corporation. It is a very short affidavit which lays out the facts of which your Honor has become familiar after six years of my laying out the same facts before this Court.

THE COURT: Well, I've heard the same song, anyway.

MR. DONELAN: Yes.

THE COURT: Now we get it in affidavit form.

MR. DONELAN: Yes, your Honor. I hope that it's a pleasant melody.

I also have for the Court, although I would say I guess that it's for the record and for the benefit of counsel for the opposition, if any, a memorandum of law on the liability of a parent corporation for debts or acts of subsidiary, which I would like to file if I may, please.

Your Honor, the Ilco story, of which you are familiar and which I'll try and make a brief record here today, is well known not only to the Court, but to all the counsel who have participated in and who have been part of this action from the beginning.

The Ilco executives whose depositions have been taken have told a familiar and sad story of not being part of the team, but, rather, being those who wished they were part of the team and wished that they were a big full line lock manufacturer.

Ilco at the present time is two days away from the end of its collective bargaining contract with the remaining 80-odd employees in the bargaining unit at Fitchburg. They have been notified, and

it's part of the affidavit which has been filed with this Court, by the Secretary of the Ilco Corporation, that the company desires to close Fitchburg.

The company will remain perhaps, if this matter today is successful, as a sales corporation, having the hardware built or manufactured by a subsidiary of Ilco's parent, Unican, at another Unican subsidiary's plant in Rocky Mount, North Carolina. That corporation, as I remember it, is a New York corporation, although a subsidiary of the Canadian parent Unican Securities Systems Limited, of which Ilco is owned in large part.

The union situation to which I averred the last time we had the opportunity of talking to your Honor, the union has not yet filed suit against us on the basis of the pension fund - but we are in the process of waiting for the other shoe to drop.

It has not happened, but we expect that it will. We have not yet had the opportunity, as far as I know from this morning, to fund the pension plan as required, at least in the union's view. That remains as an obligation perhaps of almost a hundred thousand dollars against the corporation.

The architectural hardware subject matter of this case, the Lockwood label, ceased to be as an

active label over two years ago. There are no longer any salesmen who sell Lockwood hardware.

What remains of the master key business, which was Lockwood, are the installations around the United States, the master key records which remain in Fitchburg, and a few machines which make replacement parts on certain locks which are either so old or so intricate that they cannot be shipped out somewhere else to be done.

What we're going to do with whatever the union does as of Wednesday I cannot represent to this Court. I don't know. I don't know that we will even be able to keep up the master keys which are presently out and which require maintenance and replacement parts after that. We hope so, and that's one of the reasons that we'd like to keep the corporation going - at least to that extent. And also as a sales corporation for the Ilco line, which is hardware for houses and that sort of things, which is not the subject matter of this.

Counsel for the plaintiffs - original counsel, I should say, and I guess now objectors, have had the opportunity to observe, have been furnished various financial data on Ilco - most of it audited - running back at least as far as '69,

showing the various relationships and all that.

And I understand from the few moments that we've had in the lobby here this afternoon that they have been diligent in their study and they have questions - some of which, not being an accountant and not a Peat, a Marwick or a Mitchell, I cannot answer for this Court today. And I say so right now so the Court will not be misled in any way by me not saying anything about it. I want you to know right now that I'm not an expert on the financial statements.

I think that I can represent to this Court that I am an expert on Ilco in this litigation and the fortunes of Ilco in the seven or eight years that our firm has represented it.

Ilco has, I think, being a Massachusetts local, a distinguished history. Ilco started here in New Haven many years ago, before World War I.

In January of 1972 the Ilco Corporation was acquired in large part by a purchase of the stock by Unican Securities Systems Limited - the present parent. At that time there was a subsidiary of Ilco called Keil Lock, which was a small outfit up in Charlestown, New Hampshire.

That was closed as part of the acquisition of

Ilco by Unican Securities Systems Limited. The management of Unican Securities Systems Limited required that because it was inefficient and was losing money, and they didn't care to lose any more than Ilco was already losing.

They also acquired the Ilco Corporation, they bought the stock, and they did not provide for the assumption of any liability in Ilco in the agreement. The acquisition of Ilco in 1972 was the subject of scrutiny by two different groups:

One, a banking and financing group; namely, the First National Bank of Boston, who was coming in to be the largest lender;

the second, the Worcester County National Bank, which was to be the second largest lender;

and the third, which was to be the Massachusetts Business Development Corporation for a million dollars, whose major interest it was to preserve the then 1800 or so jobs at Ilco in Fitchburg. I may be high, but it was substantially more than 80; hundreds more than 80.

At that time the agreement was that the financing would come in, but that the First National Bank of Boston would essentially have access and control of the financial picture of Ilco

up to and including information from its parent, Unican Securities Systems Limited. And that has continued down to the present day.

When receivables are collected they are deposited with the First National Bank of Boston, and if Ilco is to have any operating capital for that week the First National Bank of Boston will decide.

There has been some reduction in the loans to the three entities. And the Massachusetts Business Development Corporation which lent Ilco and Unican Securities Systems Limited a million dollars in 1972 to preserve the jobs appears to have guessed wrong. But at least I think they tried.

All of Ilco's assets, such as real property, the machines and the receivables, have been pledged to one lender or another - and still remain that way.

There has been a question raised - and I'll try to answer that right now for the Court - that some of the real estate appears to be carried at much too low a valuation. I am not a real estate lawyer nor an expert on the real property values of Fitchburg, Massachusetts, but I have been in some Connecticut mill towns and I would say pick the worst and Fitchburg outdoes it, in the wrong direction.

There are more than six plants up there empty

now - old brick mill plants, which your Honor is more familiar with perhaps than anybody in this room. And if someone can show us that those valuations are false in any way or that we've got some money up there, we'd be delighted to hear it. In fact, we'd even share it with them.

Which brings me, I guess, to a very short finish, which is why we are here today.

We are here today because Ilco cannot defend this lawsuit. It does not have the wherewithal. It has a choice: it can end its operations completely or it can do what it can to settle out and disappear.

A couple of things should be pointed out here, and I do it particularly because I'm not sure that all of the counsel have been with us these long five years or six, whatever it is that the Court has been with us and all of us have been along.

One thing is to recognize that the Ilco Corporation was never a big-time full line manufacturer of the type of the other three, now two, defendants.

To say, as Ilco witnesses have said and as I expect any that testify at the trial would say, and if we would defend I know they would say, to

threaten a Lockwood distributor who always had another line - he never carried Lockwood alone because it was too small and not big enough.

To threaten a Lockwood distributor with taking the line, unless he did something with prices or did something with his territory, was a joke then and it's now an epithet. It contained no market power or leverage.

Ilco has a chance of surviving if it can settle this case and if it can settls its equally burdensome labor problems which your Honor has heard. Preservation of the few jobs left seems to us to be the best course. So we have pursued this settlement avenue with Mr. Freeman and Mr. Montague.

If we cannot settle this case it would appear that there will be others hurt and the few remaining jobs will be lost forever.

I have to say that proving damage and liability against the company which has gone out of business, whose executives and sales force turned over in some cases almost monthly during the period of alleged conspiratorial activity, and whose profits in architectural hardware were so small or so seldom as to be non-existent, would not be an easy matter.

Ilco is certainly not a fat conglomerate

cat. It's just not there.

It would seem that an objection to the $85,000, that it's not enough, particularly from those who have not lived with all of the problems commensurate with this litigation, what they're demanding is corporate capital punishment. It's not enough that we're out of the business; we have to go into bankruptcy. And I'm not sure that Rule 23 or justice requires that.

Rule 23 was designed not as a vehicle of destruction, but, rather, as a tool of justice. And I think approval of this settlement will accomplish in a very small way, because it's a very small settlement, that end.

Thank you, your Honor.

MR. FREEMAN: Good afternoon, your Honor. Lee Freeman, Jr., for the plaintiffs.

I would first state that we do not accept any of Mr. Donelan's representations regarding liability as a condition of this settlement. Ilco's sales stay in the case. And without arguing the matter at any great length, the plaintiffs are prepared to prove that Ilco was part of this conspiracy, that Ilco arranged for collusive bids by its distributors, that Ilco terminated

distributors who infringed on the master key systems of the other defendants.

The settlement here is being made solely on the basis of Ilco's financial condition.

We have reviewed the financial statements furnished to us by Ilco Corporation and, just briefly, they show losses in 1968 of $630,000; 1969 $745,000; 1970 $630,000; 1971 $1,700,000; then in 1972 a gain of $1,900,000 when the indebtedness that Ilco owed to Cole National was forgiven.

Slight earnings in '73 and '74, when Ilco sold off certain subsidiaries. And then a loss in 1975 of $2,270,000, which might have prompted Mr. Donelan's settlement overtures.

There is an accumulated deficit in the corporation of over $3 million. Of course, Ilco has tax loss carryovers of a million four, which if it earns money in the future will operate to its benefit.

As Mr. Donelan stated, all the trade receivables, inventory and properties are pledged to the First National Bank of Boston, subject to the prior mortgages of the Massachusetts Development Corporation.

There's a debt, both short term and long term, of over $2,500,000.

Saying this, your Honor, we had the financial statements examined by our accountants. And because we had certain problems with the financial statements, and as we previously advised the Court, these problems are as follows:

There are certain assets that are being carried by Ilco Corporation at depreciated book value. There was some question in our mind as to whether or not the market value was higher and if Ilco wished to liquidate those assets they could get more money for them than the balance sheet reflects. Of course, to liquidate most of those assets it would have to go out of business.

Secondly, there were certain intra corporate transfers that appeared questionable. First, there were inventory shipments at a loss of $360,000 in 1975 to Ilco and Ilco repaid a loan of approximately $680,000 to its parent, Unican.

Thirdly, and finally, there were sales by Ilco through its North Carolina affiliate, and without a complete re-audit of Ilco's books we do not know whether those sales were made at a fair return to Ilco.

However, we researched the matter of Unican's liability for Ilco's debt and we came to the same conclusion as Mr. Donelan: that the plaintiffs could not hold Unican, a separate corporation, responsible in this litigation for the antitrust violations we have alleged.

Accordingly, unless we could prove a fraudulent transfer of assets and of money from Ilco to Unican, there's no basis that the question raised with respect to the financial statement should pose a problem to the settlement.

We, as plaintiffs, relied upon the fact that Ilco was deeply in debt to the banks and that if these arrangements with Unican had been in any way questionable, the banks would not have permitted them to occur.

In any event, the settlement agreement is conditioned upon the representations with respect to Ilco's financial condition. And if it later turns out that these representations are not true, the plaintiffs would have the ability to reopen this matter and pursue Ilco again.

I might add, your Honor, that I have authority to sign this agreement on behalf of all plaintiffs who are participating in this litigation;

all named plaintiffs. The agreement has not been formally executed. I will execute it upon the understanding that if these representations are not true, at a subsequent time the whole matter can be reopened.

The burden, I think, falls upon Ilco, if serious question is raised, to have independent audits of these questionable transactions.

But as the matter now stands we think there are sufficient safeguards to assure the Court and to assure the class members that there was no effort by Unican to siphon off or fraudulently acquire the assets of Ilco Corporation.

Thank you, your Honor.

THE COURT: Anybody else wish to be heard?

MR. MONTAGUE: Your Honor, Laddie Montague.

I'm not going to repeat what Mr. Freeman said, but I would like to just call to your Honor's attention the memorandum which we filed which sets forth the authority for the Court to approve a settlement based solely on the financial condition of a particular defendant, rather than based upon the merits of the case or the transactions within the case.

MR. FREEMAN: I'm sorry. I omitted one

factor, your Honor.

Because we did not go into the merits and into the financial condition, we provided in the settlement agreement that the money to be obtained from Ilco, which is only $25,000 paid now and $5,000 each month thereafter for twelve months, will be used to pay litigation expenses such as our expert witnesses, deposition transcripts, witness fees - upon approval by the Court.

This was done to avoid the allocation problem we had with respect to Emhart, so that we did not have to do the detailed analysis of Ilco's sales that would be required to allocate.

THE COURT: It gives you an opportunity to make an allocation of a fund for expenses, that's all.

MR. FREEMAN: And with the understanding, of course, that if we go to trial, if we prevail, and if we are awarded costs pursuant to Section 4 of the Clayton Act, that the Ilco money will be reimbursed to the extent it's been used to pay expenses.

THE COURT: Well, Mr. Freeman, are you, after your investigation, satisfied as to the financial condition of Ilco being as represented?

MR. FREEMAN: Yes, your Honor.

THE COURT: All right.

MR. FREEMAN: I think we're in the unfortunate position whereby Ilco has gone out of the contract hardware business. Its only real asset was its trade name, its master key systems, its familiarity in the industry.

Having done that and having a separate company called Unican, which manufactures padlocks, which manufactures anti-burglar devices which really don't need the Ilco or Lockwood trade name to be sold, Mr. Fish, the owner of Unican, has put himself in the position where he can simply dissolve Ilco if faced with this kind of liability and continue operations through the North Carolina affiliate and Unican.

Therefore, we are convinced that any judgment against Ilco would be uncollectible. There would be no way to pursue it any further than we are pursuing it.

THE COURT: All right.

MR. FREEMAN: If we were able to prove there was fraud, that would be a completely different matter.

But faced with the situation that we are now faced with and the situation that two banks and the development authority have allowed to occur in

past years, we have no alternative, unfortunately.

THE COURT: Did you participate in the investigation into the financial situation of Ilco, Mr. Montague?

MR. MONTAGUE: Yes, your Honor, to the extent that we reviewed the materials which were provided by Ilco.

THE COURT: Yes.

Well, to that extent, do you have a different opinion than that expressed by Mr. Freeman, or do you agree with it?

MR. MONTAGUE: I agree with him, your Honor, based on what was shown to us and what we've investigated, with the same caveats that Mr. Freeman earlier raised.

THE COURT: All right.

Anyone else wish to be heard?

MR. KING: Yes, your Honor. I'm Joe King, representing Exxon Corporation and several of its affiliates.

THE COURT: All right, Mr. King.

MR. KING: Your Honor, we're in a very awkward situation here today because --

THE COURT: You sure are.

Got a good case and no money. Is that it?

MR. KING: Well, I don't know about that, your Honor. That's the situation. Representations have been made to the Court that there is no money. We have the statements of counsel. But there's no evidence before this Court upon which it can reach a conclusion whether or not the statements of counsel are factually correct.

Now, I don't mean to imply that misleading statements were made. But my only concern is that there's no evidence in this record upon which the Court can reach a conclusion whether or not this settlement of $85,000 is, in fact, fair to the class.

And that being the case, I would like to call a witness and ask some questions about how the settlement was reached and how the determination was made that $85,000 is a fair settlement for this class.

THE COURT: Well, you've heard the statements made by counsel, have you not?

MR. KING: I certainly have, your Honor, and I'd like to inquire into them.

THE COURT: Inquire into it with respect to what? Their accuracy? Their integrity?

MR. KING: Not the integrity, but their diligence in pursuing this matter.

THE COURT: What do you suggest? How much diligence do you require the Court to insist upon?

MR. KING: Your Honor, first, I think the Court must know what, in fact, was done before it can determine whether or not this matter has been pursued aggressively enough in the class' behalf.

THE COURT: There has been a statement as to what has been done - the financial history as represented by its audit, audited reports, where it got its money, who it owes money to, what its present business prospects are, what it faces in connection with discontinuance of business with claims of the union hanging over its head and representations that if they have to go ahead and pay out litigation costs to defend this case it would throw the company into bankruptcy.

Now what else do you want? Unless you question integrity.

MR. KING: No, your Honor, I'm not questioning integrity.

But I did write a letter to counsel for the class representative and I asked for certain documents upon which they relied in reaching their conclusions.

THE COURT: Yes.

MR. KING: I received certain documents. I'm troubled by the financial statements and certain comments made therein, including by the auditing firm.

And I'd like to interrogate Mr. Montague to find out what he has done on the basis of these financial documents. Did he accept them at face value or did he make any independent investigation.

THE COURT: I'm not going to put him on the stand. I'll let him answer that.

What did you do, Mr. Montague?

MR. MONTAGUE: I think Mr. Freeman, your Honor, described exactly what we did with respect to the statements after they were received.

Mr. Freeman and I jointly went over them in Chicago, and they were then submitted to Mr. Freeman's accountant.

We then asked questions to Mr. Donelan and got his representations as he understood the situation - again telling us that he was not a financial analyst.

THE COURT: Well, are you satisfied that the statements accurately reflect the condition of the corporation as represented?

MR. MONTAGUE: Yes, we were, your Honor.

And we were relying on the information furnished to us, as best as we could understand it.

THE COURT: All right.

That's what he did.

MR. KING: Mr. Donelan has made a disclaimer of being a financial expert -- please correct me if I'm wrong.

THE COURT: That's correct.

Do you claim you, are, Mr. King? What is it you're talking about?

MR. KING: Well, for example, your Honor, Mr. Freeman stated today that there is no evidence of a fraudulent siphoning off of any assets of the corporation.

THE COURT: Right.

MR. KING: I want to know what discovery was undertaken into the possibility of fraudulent siphoning off of assets. I want to know what steps were taken.

THE COURT: Did you hear who the principal creditors are?

MR. KING: I did, your Honor.

THE COURT: Who are they?

MR. KING: First National Bank of Boston.

THE COURT: To the extent of how much money?

MR. KING: I do not recall the figure.

THE COURT: And who else is a principal creditor?

MR. KING: It's the Massachusetts, I believe, Redevelopment Authority, or somebody along that line.

THE COURT: Yes. And who else?

MR. KING: I think a principal creditor of Ilco has been --

THE COURT: Wasn't there a union?

MR. KING: Unican is the parent.

THE COURT: Wasn't there a union also?

MR. FREEMAN: First National Bank of Worcester, your Honor, is the third.

THE COURT: Of over a million dollars.

You have some lingering thought that creditors of that sort are going to sit by and let this business siphon out of funds fraudulently?

MR. KING: Your Honor, I don't believe this assumption can be made that because there are substantial financial institutions involved that automatically the statement that this corporation cannot pay more than $85,000 is a logical inference. Banks make mistakes daily.

THE COURT: Yes, that's a pretty big jump, I guess. But we were talking about the fraudulent

siphoning out of funds of this corporation, Ilco.

Is there anything to support that, you know, just gratuitous provision that you raise here as one which should have been investigated in depth by counsel for the plaintiffs? Is there any support at all for any suspicion of that kind?

MR. KING: Yes, your Honor.

THE COURT: What is it?

MR. KING: These are the financial statements audited by Peat, Marwich & Mitchell. For example, it's a letter of November 12, 1975 to Ilco's Board of Directors - an exception is made as to its opinion.

THE COURT: As to its opinion? In what respect?

MR. KING: As to the effect of certain related party transactions, and these are transactions involving sales to an affiliate, which is also owned by Unican in North Carolina.

It seems to me, I'd like to see some evidence --

THE COURT: That suggests some fraudulent withdrawal of funds to you?

MR. KING: It raises a question which I think a diligent lawyer should pursue.

THE COURT: What sort of a question does it raise in your mind?

MR. KING: Well, whenever I read a financial statement --

THE COURT: No, no.

Now, it raises a question, you say.

MR. KING: Yes.

THE COURT: Now, what sort of a question does it raise in your mind? Does it raise a question of fraudulent withdrawal of funds when you talk about related transactions with a parent corporation, or does it raise a question of whether those are for fair market or arm's length transactions?

MR. KING: The accounting firm of Peat, Marwick & Mitchell called them less than arm's length transactions. And Mr. Freeman said he was concerned about fraud.

THE COURT: All right. Whatever they call them. What does it suggest to you, a fraudulent withdrawal of funds?

MR. KING: That suggestion comes to mind immediately. And Mr. Freeman said that he obviously was concerned about fraudulent siphoning off of assets. They were his terms.

THE COURT: All right . What else?

MR. KING: The financial statements make it quite clear that substantial repayments of debt was made to the parent during the pendancy of this lawsuit, as well as the fact that I think Mr. Freeman pointed out there was substantial transfers of inventory to this affiliated corporation.

THE COURT: Suppose it had been done. What could this Court do about it? Is that a frsudulent conveyence, if they repaid a favorite lender?

What was wrong with that?

MR. KING: Your Honor, let me answer you in this respect. One of the documents submitted to me by plaintiffs' counsel upon which they relied in reaching the conclusion that $25,000 from Ilco was all that could be achieved in this case was a memorandum. It is entitled, "Memorandum of Parent Corporation for Debts or Acts of Subsidiary", prepared by defense counsel.

THE COURT: Yes.

MR. KING: Now, it's five pages and it's well written. I'm not criticizing. But it's a statement of the general rule of law that a parent is not liable for the acts of its subsidiaries.

THE COURT: Well, do you agree with that as

a general rule of law?

MR. KING: I certainly do, your Honor. But there is no factual analysis in this memorandum applying the exceptions set forth in here to the general rule to the circumstances at hand.

I believe that rather than relying on a mere legal memorandum of his adversary as to whether a parent is liable for the acts of a subsidiary, an attorney must delve into that matter himself and make his own conclusion.

It may well be, based upon the Peat, Marwick financial statements, that the parent here has, in fact, exercised dominion and control over this subsidiary and that the parent, despite the general rule of law, is, in fact, liable in this case.

THE COURT: Well, we have the opinion of counsel on their investigation that that's not the case.

MR. KING: I understand that we have the opinion of defense counsel, adopted by plaintiffs' counsel, without having made an independent analysis, unless they did not provide me with all the material I requested.

THE COURT: Anything else?

MR. KING: Yes, your Honor.

So may I make the formal motion to present evidence here by calling Mr. Montague as a witness?

THE COURT: No sir, you may not call Mr. Montague as a witness.

If you have some evidence that you brought here, you may present it.

MR. KING: Possibly there will be no objections if I might put into the record the financial statements we spoke of.

Would counsel object?

THE COURT: No, no objection.

Now what did we speak of?

MR. KING: The financial statements relied upon by plaintiffs' counsel.

THE COURT: They may be filed, yes.

MR. KING: Might we call them Group Exhibit 1 of Objectors, or something along that line?

THE COURT: Why don't we call them Exxon's objections.

MR. KING: That would be fine.

Your Honor, my closing point is that even if this Court approves the settlement, which I don't believe it can at this time unless the factual record is developed - and I know your Honor has denied me leave to present evidence on that today, bu

THE COURT: I didn't deny you leave to present evidence. I denied you leave to examine Mr. Freeman under oath.

MR. KING: Well, I would have examined him as to what steps he took to become convinced that there was no fraudulent transactions here.

THE COURT: Yes, all right.

MR. KING: But even if approved, I believe it would be wholly inappropriate for the $85,000 proceeds to be reserved for the payment of litigation expenses as is now agreed upon.

And I was going to examine Mr. Montague on that provision, too. I think that provision is most inappropriate and the proceeds of this settlement, whether it's $85,000 or if a record would be discovered, could be made that they ould pay $285,000 -- whatever the proceeds are, they should be lumped with the Emhart settlement proceeds into a common fund for the class.

This provision makes the settlement proceeds from Ilco, in a sense, the private domain of plaintiffs' counsel. I think that's wholly inappropriate.

I have no objection to plaintiffs' counsel applying for an award of expenses from this Court.

THE COURT: Well, they're not going to use it unless they make an application.

MR. KING: I appreciate that.

THE COURT: You can be sure of that. I don't care how they label it either, you know.

MR. KING: Before the fact that these proceeds should not be earmarked for the use of their --

THE COURT: They're going into the same fund and earn the same kind of interest that the escrow fund made up of Emhart's settlement is making. And if they want to use that money for expenses they are going to have to make an application to the Court.

MR. KING: I certainly can't believe that that provision originated with Mr. Donelan. And it seems to me that the settlement cannot be approved or should not be approved with that provision contained in it and that that provision should be stricken.

Thank you, your Honor.

THE COURT: All right.

Anyone else wish to be heard?

MR. SEYMOUR: Samuel Seymour, Washington, D.C.

THE COURT: Yes sir.

MR. SEYMOUR: Your Honor, I'll make my point very simply.

I do think that where the financial statements indicate that within the year prior to the settlement and while the litigation was pending $608,000 went upstairs and $350,000 went in a loss sale of inventory, and there are other transactions which the accountants have been unable to certify represented the fair result of operations of the company, that there should be in the record, placed there by the settlement proponents, more evidence than is there now that they looked into these transactions and are satisfied that they were arm's length transactions between the corporations involved.

The endorsement of the banks is of no significance because the banks' interest and the interest of other creditors, including class members, is not the same.

It may well have been in the banks' interest to get this money out of Ilco and get it up into parent, who doubtlessly has guaranteed its obligations. I think that we must look at this in this proceeding from the standpoint of the class members.

I don't think there's adequate evidence

there.

I don't have anything to add to that point. I want to preserve it simply for the record and conclude my presentation.

THE COURT: All right.

Do you want to make a response to that, Mr. Freeman or Mr. Donelan?

MR. DONELAN: Maybe I should, your Honor, just to the extent that I do not retract my statement that I'm not a financial expert.

One thing, though. I think Mr. Seymour, in the language of the Court, has made another hugh leap. If we could have gotten Unican to pay us, perhaps we would have fought the suit. But we could not get Unican to pay us, nor to guarantee the obligations of the Ilco Corporation for the very sound reason, as they explained to us, that if they got too close to Ilco then the plaintiffs in the antitrust suit would be looking to Unican's Securities Systems Limited.

Therefore, they, knowing that the suit was extant when they acquired the corporation under the duress of a lawsuit in 1972, have operated it as a separate corporation from that time to this day.

MR. FREEMAN: I would just add the point,

your Honor, that we did, in fact, research the possibility of holding Unican liable for Ilco's alleged violations and we were immediately struck with the problem that Unican did not acquire Ilco until subsequent to the federal government suit, the consent decrees in 1972, and therefore even under the body of law most favorable to the plaintiffs in terms of parent's involvement with subsidiary operations, we still couldn't pierce the corporate veil and get to Unican.

And the only way in which we could do that is to prove that there was some kind of fraudulent transfer. And as your Honor pointed out, the repayment of a legitimate debt to a parent - we could simply not see that was a basis for finding any kind of fraudulent transfer.

Now, as I have stated, the settlement agreement reserves to the plaintiffs the ability to go forward if in the future it is ever discovered that these transfers were fraudulent.

MR. SEYMOUR: If the Court please, I wish to make something clear.

I did not raise the question of Unican being liable for the antitrust violations. I'm concerned with its liability arising from these

transactions which occurred pendente lite and affected the ability of Ilco to pay a judgment.

THE COURT: I understood Mr. Freeman to say that these payments from Ilco to the parent with in satisfaction of debt.

MR. SEYMOUR: The question here is whether that debt had to be called at this time, whether the transactions of sending even more money --

THE COURT: Who can raise that question?

MR. SEYMOUR: Pardon?

THE COURT: Who can raise that question, whether it had to be alled at this time? Who can stop them from calling it? I don't understand that.

MR. SEYMOUR: I think there is a question here as to whether Ilco is independent or whether it is dominated by its parent at the time of this settlement; and whether Ilco, if left alone, would have paid $225,000 for the stock of a subsidiary, would have made these kinds of transfers to an affiliated company.

Even aside from the $600,000 in indebtedness, there are other transactions which in my mind there is a question.

A reasonable mak would ask a question: Would a corporation, in control of its own destiny

rather than controlled by a parent company, have entered into these transactions?

And I think that dominance is one of the exceptions to the rule of parent non-liability where there are separate corporations.

So the point I just want to make clear is limited only to the question of domination now and its effect on the potential judgment debtor.

Secondly, there is no provision in this settlement agreement for the plaintiffs to recoup. There's only a right which arises by implication from Paragraph 2(b) to sue Ilco for fraud for misrepresentation.

This is not a contingent contract, as I read it. And I believe Mr. Donelan just reminded plaintiffs' liaison counsel of that fact.

MR. FREEMAN: There is a representation in Paragraph 2(b) that it's separate and that the judgment would be wholly uncollectible if the action were to proceed and that it's closing its plant, that it's terminated its business. And if those representations prove to be false, I think we have a basis to go against Ilco.

THE COURT: Anyone else wish to be heard?

MR. MONTAGUE: Your Honor, may I respond

briefly to some of Mr. King's arguments?

THE COURT: Yes sir.

MR. MONTAGUE: I noticed in listening to Mr. King that he was not attacking anything but plaintiffs' counsel. He didn't attack Ilco, he didn't really attack the settlement. He's attacking the diligence of plaintiffs' counsel.

Now, Mr. King asked for some information prior to the time of this hearing and it was furnished to him. If he had had questions concerning the financial ability of Ilco he could have addressed those questions to counsel for Ilco and tried to get some information prior to this hearing.

Instead, he has come here today for the second time out of two settlement hearings and raised questions without doing any homework at all, without presenting any evidence or any substance for his objections.

I would like to call to the Court's attention the case of City of Detroit vs. Grinnel Corporation in the Second Circuit, 495 F. 2nd 448, 1974, and particularly page 464 within that opinion, which dealt with the objectors' burden and the objectors' behavior with respect to attacking a settlement.

If I may, I would like to quote two short

portions of that opinion.

The Court stated: "In general, the position taken by the objectors is that by merely objecting they are entitled to stop the settlement in its tracks, without demonstrating any factual basis for their objections and to force the parties to expend large amounts of time, money and effort to answer their rhetorical questions, notwithstanding the copious discovery available from years of prior litigation and extensive pre-trial proceedings".

And then the Court continued: "To allow the objectors to disrupt the settlement on the basis of nothing more than their unsupported suppositions would completely thwart the settlement process".

I'm afraid that's what's happening here. And that concerns me.

THE COURT: All right.

MR. KING: Might I respond real briefly, your Honor?

THE COURT: What's that?

MR. KING: May I respond to Mr. Montague in just a moment?

THE COURT: Just a moment, yes.

MR. KING: Despite this reference to the Grinnel case, it's quite clear that the burden is

on those sponsoring the settlement to establish that it's fair to the class members.

I think Professor Wright and Professor Miller make that quite clear in Section 1797 of the Treatise on Federal Civil Procedure. It's the burden of those sponsoring the settlement, who have been litigating this case for some years presumably, to come into this Court and to show that it's fair.

The suggestion that we are coming here making unsupported allegations and that I have not prepared is wholly unwarranted. If I had not reviewed those financial statements I would not have become suspicious that possibly this is not all that Ilco can pay, based upon the financial statements furnished to me by counsel. And I only received my copies last Thursday.

THE COURT: Mr. King, if that's all they can pay, is it a fair settlement?

MR. KING: If it's all they can pay, your Honor, I think I would have no objection.

THE COURT: So it gets down to whether or not you object to the determination that it's all they can pay.

MR. KING: I think we need an evidentiary record to determine that, in light of the financial

disclosures, and I'd like to move that this matter be referred to a Special Master under Rule 53 --

THE COURT: Not a chance.

MR. KING: -- where an evidentiary record can be made.

THE COURT: Not a chance.

There's only $85,000. If you refer it to a Special Master there wouldn't be anything left.

MR. KING: Well, your Honor, I think the questions are simple and could be determined --

THE COURT: I think you'd owe money, from what these fellows get these days in these antitrust cases, and these investigations and hiring accountants.

MR. FREEMAN: Your Honor, I would just like to make two observations for the record, since Mr. King has just come into this scene very late.

We've been in this case since 1970 and I don't think anyone, least of all Mr. Donelan, can make the claim that we've been less than aggressive. Mr. Donelan and I have had our share of very heated disagreements in the course of discovery.

THE COURT: I'm surprised to hear it.

MR. FREEMAN: And there is no question that this matter was scrutinized.

Secondly, we'd like to point out that Exxon Corporation has taken positions antagonistic to the plaintiffs' position in this litigation and in other litigation pending at the same time - more specifically, the Western Liquid Asphalt case in which Exxon was a defendant.

THE COURT: Do you want to tell me all about that?

MR. FREEMAN: And argued that indirect purchasers had no standing to sue.

I think their motives are suspect for being here. They're not here as a legitimate claimant; they're here only to disrupt the settlement and attack Mr. Montague as they've attacked him in several other cases.

THE COURT: Oh, no. I'm not going to let it get any worse than it is. We've slid far enough down.

MR. FREEMAN: Thank you, your Honor.

THE COURT: All right.

Well, do you want me to rule right now? I think that would be simpler for everybody.

What remains to be done here - anything?

MR. FREEMAN: I don't think so.

MR. DONELAN: No, your Honor.

MR. FREEMAN: No.

THE COURT: Well, this is a motion to approve a proposed settlement.

MR. FREEMAN: Yes, your Honor.

THE COURT: So then, I'll grant that motion and that will require that you submit an agreement that is signed, and also a motion for entry of partial judgment, right?

MR. FREEMAN: Yes, your Honor.

THE COURT: So ordered.

Anything else?

Regretfully, we will adjourn for the day.

(Whereupon, Court was adjourned.)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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IN RE:
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MASTER KEY M.D.L. 45
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ANTITRUST LITIGATION
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COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and accurate transcript taken from my original stenographic notes taken on June 28, 1976, in the U.S. District Court, for the District of Connecticut, at Hartford, before the Honorable M. Joseph Blumenfeld, U.S.D.J.

Official Court Reporter

DATED: JULY 1, 1976.

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FILED
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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

578

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

All Cases

STIPULATION OF DISMISSAL OF ILCO CORPORATION

Pursuant to this Court's allowance on June 28, 1976 of the Motion of Defendant Ilco Corporation and Co-Liaison Counsel for Plaintiffs to Approve the Settlement Agreement of Defendant Ilco Corporation, the Settlement Agreement dated June 28, 1976 between counsel for plaintiffs and counsel for Ilco Corporation, and Rule 41 of the Federal Rules of Civil Procedure, all plaintiffs in all actions encompassed within this consolidated proceeding and Ilco Corporation, by their attorneys duly authorized, hereby stipulate that all actions encompassed within this consolidated proceeding may be and hereby are dismissed as to defendant Ilco Corporation, with prejudice.

FILED
JUL 14 1976
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

Approved
7-12-76 MJB USDJ

FILED
JUL 14 11 54 AM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Stipulation of Dismissal of Ilco Corporation was served upon all counsel of record by mailing a copy thereof this 2nd day of July, 1976.

David P. Grossi

7-2-76

3623-53-3

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 All Cases

MOTION OF ALL PLAINTIFFS AND DEFENDANT ILCO CORPORATION FOR DIRECTION OF ENTRY OF FINAL JUDGMENT AS TO ILCO CORPORATION PURSUANT TO RULE 54(b), FED. R. CIV. P.

All plaintiffs and defendant Ilco Corporation, by their counsel duly authorized, respectfully move that the Court make the express determination that there is no just reason for delay and expressly direct and order that final judgment of dismissal with prejudice be entered as to defendant Ilco Corporation in all cases encompassed within this consolidated proceeding, all pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Counsel for all plaintiffs and counsel for defendant Ilco Corporation entered into a Settlement Agreement dated June 28, 1976, which has been filed with the Court and which, after hearing on June 28, 1976, was approved by this Court. Said hearing and said approval followed notice to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings pursuant to Rule 23 of the Federal Rules of Civil Procedure and this Court's Order With Respect To The Giving of Notice of Partial Settlement (Ilco Corporation), dated June 11, 1976.

All plaintiffs and defendant Ilco Corporation, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, are filing a Stipulation of Dismissal, dismissing

all actions as to Ilco Corporation, with prejudice. Eaton Corporation and Sargent & Company remain as defendants in this consolidated proceeding, and trial on the issue of liability is scheduled to commence in September of 1976.

There is no just reason for delay, and accordingly it is respectfully requested that the within Motion be granted. A proposed Order of Approval of Settlement and Final Judgment of Dismissal of Ilco Corporation With Prejudice is attached as Exhibit ..

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DATED: July 2 , 1976

EXHIBIT A

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M. D. L. DOCKET NO. 45 All Cases

ORDER OF APPROVAL OF SETTLEMENT AND FINAL JUDGMENT OF DISMISSAL OF ILCO CORPORATION WITH PREJUDICE

All plaintiffs in all actions within this consolidated proceeding having entered into a Settlement Agreement with defendant Ilco Corporation dated June 28, 1976 and filed with this Court; and notices to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings, such classes having been provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved in these actions by this Court's Ruling on Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60, 377 (D. Conn. 1975), appeal dismissed, ___ F.2d ___ (2d Cir. 1975), having been mailed and published on or before June 15, 1976 in accordance with this Court's Order With Respect To The Giving Of Notice of Partial Settlement (Ilco Corporation), dated June 11, 1976, all of which are incorporated by reference as though fully set forth herein; and recipients of such notice having been informed by the terms of those notices of the proposed settlement with Ilco Corpoation and dismissal of these actions with prejudice as to Ilco Corporation, and that they might appear at a hearing on June 28, 1976 if they wished to object to the proposed settlement; and the Court having held such hearing on June 28, 1976

and having heard interested persons with respect to whether the proposed settlement was fair, adequate, reasonable and equitable, and the Court on June 28, 1976 having allowed the motion of all plaintiffs and Ilco Corporation to approve the settlement agreement of Ilco Corporation, and the parties to such proposed settlement having stipulated that the Court may, if it approves the proposed settlement, make all such determinations and orders as it may deem necessary or proper for the implementation and consummation of such proposed settlement; and the parties to the proposed settlement having filed a Stipulation of Dismissal, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, dismissing all actions as to Ilco Corporation, with prejudice;

NOW, THEREFORE:

The Court hereby finds, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, that the afore-described notice was the best notice practicable under the circumstances and that it included individual notice to all class members who filed appearances or otherwise filed requests to be kept informed as to the status of these proceedings as a result of having received notice of the pendency of these actions and of the Emhart Settlement pursuant to this Court's Order With Respect To The Giving Of Class Action Notices dated March 3, 1976. The Court further finds that the lists prepared for and the mailing of notices (Affidavit of Mailing Notice of Partial Settlement (Ilco Corporation), and Exhibits thereto, dated June 22, 1976, of Lee A. Freeman, Jr., Co-Liaison Counsel for Plaintiffs; and Affidavit of Mailing of Legal Notice Re: Proposed Ilco Settlement to Motel, Hotel, Office Building and Apartment Building Class, and Exhibits thereto, dated June 22, 1976, of H. Laddie Montague, Jr., Co-Liaison Counsel for

Plaintiffs) were complete and accurate, and the Court further finds that notice was given by publication on June 15, 1976, in all regional editions of the Wall Street Journal.

The Court further finds, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and on the basis of the terms and conditions of the Settlement Agreement and the Court's familiarity with the legal and factual issues raised by these actions, that the proposed settlement is fair, adequate, reasonable and equitable with respect to all parties and class members.

The Court expressly determines that there is no just reason for delay and that final judgments dismissing these actions as to Ilco Corporation with prejudice should be entered immediately.

IT IS HEREBY ORDERED, ADJUDGED AND EXPRESSLY DIRECTED:

1. The proposed settlement of these actions by Ilco Corporation on the terms and conditions set forth in the Settlement Agreement dated June 28, 1976 and filed with this Court is hereby confirmed as fair, adequate, reasonable and equitable and approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2. These actions are hereby dismissed as to Ilco Corporation with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

3. This judgment, dismissing each of the actions as to Ilco Corporation with prejudice, shall be final and shall

be entered as of this date, in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

Dated at Hartford, Connecticut this day of July, 1976.

ENTER:

M. Joseph Blumenfeld
United States District Judge

John W. Barnett, Esq.
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195 Church Street
New Haven, Connecticut 06508

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Cleveland, Ohio 44115

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Hartford, Connecticut 06106

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Capitol Annex
Harrisburg, Pennsylvania 17120

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William Simon, Esq.
G. Joseph King, Esq.
Howrey & Simon
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion of All Plaintiffs and Defendant Ilco Corporation for Direction of Entry of Final Judgment as to Ilco Corporation Pursuant to Rule 54(b), Fed. R. Civ. P. was served upon all counsel of record by mailing a copy thereof this 2nd day of July, 1976.

David P. Grossi

5625-53-3

FILED
JUL 14 11 54 AM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

5791

IN RE:

MASTER KEY ANTITRUST LITIGATION

M. D. L. DOCKET NO. 45

All Cases

ORDER OF APPROVAL OF SETTLEMENT AND FINAL JUDGMENT OF DISMISSAL OF ILCO CORPORATION WITH PREJUDICE

All plaintiffs in all actions within this consolidated proceeding having entered into a Settlement Agreement with defendant Ilco Corporation dated June 28, 1976 and filed with this Court; and notices to all counsel who have filed appearances on behalf of any plaintiff or class member and to all class members who have filed requests to be kept informed as to the status of these proceedings, such classes having been provisionally certified, see City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and certified and approved in these actions by this Court's Ruling on Pending Motions, dated May 27, 1975, In re Master Key Antitrust Litigation, 1975-1 Trade Cas. ¶60, 377 (D. Conn. 1975), appeal dismissed, ___ F.2d ___ (2d Cir. 1975), having been mailed and published on or before June 15, 1976 in accordance with this Court's Order With Respect To The Giving Of Notice of Partial Settlement (Ilco Corporation), dated June 11, 1976, all of which are incorporated by reference as though fully set forth herein; and recipients of such notice having been informed by the terms of those notices of the proposed settlement with Ilco Corpoation and dismissal of these actions with prejudice as to Ilco Corporation, and that they might appear at a hearing on June 28, 1976 if they wished to object to the proposed settlement; and the Court having held such hearing on June 28, 1976

579(A)

Kansas City, Kansas 66106

and having heard interested persons with respect to whether the proposed settlement was fair, adequate, reasonable and equitable, and the Court on June 28, 1976 having allowed the motion of all plaintiffs and Ilco Corporation to approve the settlement agreement of Ilco Corporation, and the parties to such proposed settlement having stipulated that the Court may, if it approves the proposed settlement, make all such determinations and orders as it may deem necessary or proper for the implementation and consummation of such proposed settlement; and the parties to the proposed settlement having filed a Stipulation of Dismissal, pursuant to the above and Rule 41 of the Federal Rules of Civil Procedure, dismissing all actions as to Ilco Corporation, with prejudice;

NOW, THEREFORE:

The Court hereby finds, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, that the afore-described notice was the best notice practicable under the circumstances and that it included individual notice to all class members who filed appearances or otherwise filed requests to be kept informed as to the status of these proceedings as a result of having received notice of the pendency of these actions and of the Emhart Settlement pursuant to this Court's Order With Respect To The Giving Of Class Action Notices dated March 3, 1976. The Court further finds that the lists prepared for and the mailing of notices (Affidavit of Mailing Notice of Partial Settlement (Ilco Corporation), and Exhibits thereto, dated June 22, 1976, of Lee A. Freeman, Jr., Co-Liaison Counsel for Plaintiffs; and Affidavit of Mailing of Legal Notice Re: Proposed Ilco Settlement to Motel, Hotel, Office Building and Apartment Building Class, and Exhibits thereto, dated June 22, 1976, of H. Laddie Montague, Jr., Co-Liaison Counsel for

Plaintiffs) were complete and accurate, and the Court further finds that notice was given by publication on June 15, 1976, in all regional editions of the Wall Street Journal.

The Court further finds, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and on the basis of the terms and conditions of the Settlement Agreement and the Court's familiarity with the legal and factual issues raised by these actions, that the proposed settlement is fair, adequate, reasonable and equitable with respect to all parties and class members.

The Court expressly determines that there is no just reason for delay and that final judgments dismissing these actions as to Ilco Corporation with prejudice should be entered immediately.

IT IS HEREBY ORDERED, ADJUDGED AND EXPRESSLY DIRECTED:

1. The proposed settlement of these actions by Ilco Corporation on the terms and conditions set forth in the Settlement Agreement dated June 28, 1976 and filed with this Court is hereby confirmed as fair, adequate, reasonable and equitable and approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2. These actions are hereby dismissed as to Ilco Corporation with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

3. This judgment, dismissing each of the actions as to Ilco Corporation with prejudice, shall be final and shall

be entered as of this date, in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

Dated at Hartford, Connecticut this 12th day of July, 1976.

ENTER:

M. Joseph Blumenfeld
United States District Judge

FILED
JUL 14 2 06 PM '76
U.S. DISTRICT COURT
CLERK
HARTFORD, CONN.

JUL 14 1976
HARTFORD

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JUL 20 10 59 AM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	MDL DOCKET NO. 45 (ALL CASES) July 16, 1976

NOTICE OF APPEAL

Notice is hereby given that Exxon Corporation, Esso Eastern, Inc., Exxon Production Research Company, Esso Exploration, Inc., Esso Inter-America, Inc., Jayven, Inc., Gilbarco, Inc., Exxon Nuclear Company, Inc., and Exxon Research & Engineering Company, hereby appeal from the Order Of Approval Of Settlement And Final Judgment Of Dismissal Of Emhart Corporation With Prejudice, entered on June 29, 1976.

Respectfully submitted,

WILLIAM SIMON
G. JOSEPH KING
HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 872-8800

Attorneys for
Appellants

Dated: July 16, 1976

Dist. Ct. Docket File
3623-53-3
73

(604)

FILED
AUG 3 9 03 AM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	MDL DOCKET NO. 45 (ALL CASES) July 26, 1976

NOTICE OF APPEAL

Notice is hereby given that Exxon Corporation, Esso Eastern, Inc., Exxon Production Research Company, Esso Exploration, Inc., Esso Inter-America, Inc., Jayven, Inc., Gilbarco, Inc., Exxon Nuclear Company, Inc., and Exxon Research & Engineering Company, hereby appeal from the Order Of Approval Of Settlement And Final Judgment Of Dismissal Of Ilco Corporation With Prejudice, dated July 12, 1976, and filed July 14, 1976.

Respectfully submitted,

WILLIAM SIMON
G. JOSEPH KING
HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 872-8800

Attorneys for
Appellants

July 26, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
MASTER KEY ANTITRUST LITIGATION	:	M.D.L. DOCKET NO. 45
AMHERST LEASING CORPORATION, et al	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 14, 234
EMHART CORPORATION, EATON CORPORATION SARGENT & COMPANY and ILCO CORPORATION,	:	
Defendants.	:	

ORDER APPOINTING COMMITTEE OF COUNSEL
FOR PURPOSES OF ALLOCATION AND
DISTRIBUTION OF RECOVERIES ON
BEHALF OF THE PRIVATE PLAINTIFF CLASS

Upon the motion of co-liaison counsel H. Laddie Montague, Jr., it is hereby ORDERED that:

1. A committee of counsel comprised of H. Laddie Montague, Jr., Esquire and Samuel H. Seymour, Esquire, for the purpose of consulting on behalf of the Private Plaintiff Class on all future issues relating to the allocation of any recoveries among the classes in this litigation and the distribution thereof to the Private Plaintiff Class is hereby established and appointed; and

2. Mr. Montague is appointed as the chairman of this Committee.

Dated at Hartford, Connecticut this 11th day of August, 1976.

ENTER:

/s/ M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

6/26/15

MASTER KEY ANTITRUST LITIGATION
M.D.L. Docket No. 45
(All Cases)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into among the undersigned in compromise and settlement of the claims of all plaintiffs (which as used herein includes intervenors) and all members of the classes in the cases listed below, including all antitrust claims, concerning any purchase to date, whether direct or indirect, of master key systems, master key extensions, locksets, door closers, exit devices, builders' hardware and/or contract hardware ("contract hardware"), which any and all plaintiffs and class members have asserted or might assert against Emhart Corporation (the "Settling Defendant"), including but not limited to the claims set forth in the following actions now pending in the United States District Court for the District of Connecticut (the "Court"):

Name	Civil Action No.
1. State of Illinois v. Emhart Corp., et al.	15,262
2. State of Indiana v. Emhart Corp., et al.	14,148
3. Commonwealth of Pennsylvania v. Emhart Corp., et al.	14,191
4. State of West Virginia v. Emhart Corp., et al.	15,038
5. State of Minnesota v. Emhart Corp., et al.	14,233

	Name	Civil Action No.
6.	State of Michigan v. Emhart Corp., et al.	14,233
7.	State of Wisconsin v. Emhart Corp., et al.	14,233
8.	State of Ohio v. Emhart Corp., et al.	14,384
9.	State of New York v. Emhart Corp., et al.	14,236
10.	State of Kansas v. Emhart Corp., et al.	14,546
11.	State of Florida v. Emhart Corp., et al.	14,231
12.	State of Connecticut v. Emhart Corp., et al.	14,147
13.	State of California v. Emhart Corp., et al.	H-61
14.	State of New Jersey v. Emhart Corp., et al.	15,664
15.	Sturdy Homes Co., et al. v. Emhart Corp., et al.	14,333
16.	City of New York v. Emhart Corp., et al.	14,235
17.	City of Philadelphia v. Emhart Corp., et al.	14,233
18,	Amherst Leasing v. Emhart Corp., et al.	14,234

The actions named above will hereinafter be referred to collectively as "these actions". If other states or parties intervene in any of the above actions or file separate suits prior to judicial approval of this settlement, then such states or parties shall be deemed to be included in the above list of actions.

I. The Signatories to this Agreement

The signatories hereto enter into this Agreement on behalf of the following:

1. Lee A. Freeman, Jr., Esq., as liaison counsel, agent, and representative for the following:

> a. Each named state and local governmental plaintiff and all class members of each state and local governmental class in these actions, representing all state, county, and municipal agencies, authorities, commissions and all political subdivisions and entities situated in each of those above-named states, including school districts, boards of education, hospitals and other institutions supported in whole or part by public funds, and including the class members in the certified national class action on behalf of public entities.
>
> b. Each named plaintiff and class member in those actions brought on behalf of private owners and builder owners of apartment houses, office buildings, hotels and motels throughout the United States.

The above-named counsel will be referred to hereinafter as "Plaintiffs' Counsel," and the above-named and above-referenced plaintiffs and class members will be referred to collectively as the "Settling Plaintiffs." Reference is made to the Court's order dated May 27, 1975 and related pleadings for more detailed descriptions of said classes, which descriptions are included herein. Plaintiffs' Counsel represents that he is authorized to take all steps on behalf of the respective plaintiffs and class members which this Agreement contemplates.

2. Ralph C. Dixon, Esq., as counsel for Emhart Corporation, the Settling Defendant.

II. Covenants of the Settling Parties

In consideration of the covenants and agreements herein set forth, it is agreed as follows:

A. The Settling Defendant denies that it or any of its predecessors or present or former agents, officers, directors or employees committed, conspired to commit, or participated in any violation of the antitrust laws or other laws, or that it is liable to the Settling Plaintiffs or to anyone for damages relating to the sale of contract hardware, arising out of, related to, or based, in whole or in part, on any of the facts or matters alleged in these actions, and neither this Agreement nor the carrying out of any of the actions contemplated hereby shall be deemed or construed in any way as an admission of any of the foregoing. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of the Settling Defendant. The Settling Defendant enters into this Agreement in order to put to rest all controversy and to avoid lengthy, costly and time-consuming litigation and to obtain a compromise and final settlement of the Settling Plaintiffs'

claims without in any way acknowledging any fault or liability.

B. The Settling Defendant will pay $7,500,000.00 into a settlement fund ("the Fund") in compromise and final settlement of all the Settling Plaintiffs' claims against the Settling Defendant. This amount shall be paid into the Fund on or before July 31, 1975, provided, however, that prior to July 31, 1975, each named plaintiff in these actions has accepted this Agreement in writing on behalf of itself and the respective class or classes it represents. The Fund shall be apportioned as follows: Eighty (80) percent to plaintiffs and class members in those actions brought on behalf of public entities and twenty (20) percent to plaintiffs and class members in those actions brought on behalf of private entities.

C. The Settling Defendant will deposit the Fund into an escrow account. The escrow account shall be held by The Connecticut Bank and Trust Company as escrow agent pursuant to the terms of an escrow agreement to be entered into, with Court approval, between the escrow agent and the settling parties. Lee A. Freeman, Jr., Esq., shall be the sole trustee of the escrow account. No distributions or payments of any kind shall be made from the Fund unless pursuant to an order of the Court.

D. The Settling Defendant and Settling Plaintiffs shall use their best efforts in good faith to agree upon a form of notice to be submitted to the Court for its approval. Notices in the form approved by the Court shall be directed to each class pursuant to Rule 23 of the Federal Rules of Civil Procedure, requiring each member thereof to state by a specified date whether he wishes to be excluded from the class. Within thirty (30) days after such specified date the Settling Defendant may, if there is a significant reduction of class members due to opt-outs, in its sole discretion withdraw from the settlement by giving written notice of its withdrawal to the Settling Plaintiffs and to the Court.

E. Consummation of this settlement is subject to the approval of the Court under Rule 23. Subject to the terms of this agreement, the Court may, after the interested parties have been given notice and an opportunity to be heard, make all such determinations and orders as it may deem necessary or proper for the implementation and consummation of this settlement. Such Court action shall include the disposition of any pending collateral litigation relating to the settlement.

F. No distribution of the Fund to claimants shall be made until Court approval of the settlement, dismissal of Settling Defendant and disposition of collateral litigation, if any, have become final either by affirmance in the event of any appeal or appeals or by expiration of the time for appeal.

G. Settling Plaintiffs shall present to the Court plans for the distribution of the Fund to the various claimants and classes of claimants. Distribution of the Fund to the Settling Plaintiffs shall be in accordance with plans of distribution approved by the Court.

H. The Settling Plaintiffs, jointly and severally, including all named plaintiffs and all class members, do hereby expressly covenant, promise and agree that the Settling Plaintiffs shall not now or hereafter institute, maintain or assert in any way any claims against the Settling Defendant, its predecessors, stockholders, officers, directors, agents or employees, past or present, which claims are based upon or arise out of any alleged violation of any antitrust laws, or other laws, or which relate in any way to the sale or purchase, whether direct or indirect, of contract hardware to the date

of this agreement. The above covenant shall not be construed as a release, but in the event that any non-settling defendant in these actions should obtain a release from any Settling Plaintiff, that Settling Plaintiff hereby agrees to grant Settling Defendant a full release.

I. The sales of contract hardware by the Settling Defendant shall remain in these actions in support of claims for alleged damages asserted against the other defendants.

J. The Settling Plaintiffs will not seek to require any further discovery participation by the Settling Defendant in any of these actions, and will cooperate in urging the Court that no such participation be required. The proceedings in these actions will be considered by the Settling Plaintiffs to be discontinued as to the Settling Defendant from the date of this Agreement, with the exception that the Settling Defendant agrees to provide information regarding its pricing and sales of contract hardware to the extent that such information is readily available, and respond to reasonable requests for admissions of fact under Rule 36, F.R.Civ.P. In the event that the Settling Plaintiffs pursue their claims against the non-settling defendants, the

Settling Plaintiffs agree that no more than three employees of the Settling Defendant will be called as witnesses in any trial of such claims, provided such witnesses shall not include directors or officers of the Settling Defendant.

K. In the event that it is judicially determined by any court having jurisdiction, that this settlement cannot be consummated, or if the Settling Defendant withdraws from this Agreement pursuant to its terms, the amounts contributed to the Fund by the Settling Defendant, together with the interest earned on such amounts, shall be returned promptly to the Settling Defendant.

L. All interest earned by the Fund shall accrue to the Settling Plaintiffs. All costs and expenses incurred in any of the proceedings under this Agreement, including costs and expenses of notice and administration, and all plaintiffs attorneys' fees, out-of-pocket expenses and costs arising out of this settlement of these actions shall be paid only from the Fund. In no event shall the Settling Defendant be obligated to pay more to the Fund than the amount specified in Paragraph B above.

M. The signatories to this Agreement represent that they are authorized on behalf of their respective parties and

class members referred to above to take steps contemplated by this Agreement and to effect such settlement on the terms and conditions stated herein. The signatories to this Agreement agree to cooperate in seeking court approval of the settlement contemplated by this Agreement and to use their best efforts to effect its consummation and to secure the complete and final dismissal of the Settling Defendant from these actions in accordance with the terms and conditions of this Agreement.

N. This Settlement Agreement may be executed in counterparts by the parties hereto.

O. When approved by the Court, this Agreement shall (1) in addition to the Settling Defendant, inure to the benefit of its present or past stockholders, officers, directors, agents, employees, affiliates, subsidiaries, successors, assigns and legal representatives, and (2) inure to the benefit of and be binding upon the parties hereto, each and all of the members of the classes who have not timely excluded themselves, and their respective successors, assigns and legal representatives.

Agreed this 26th day of June, 1975:

Lee A. Freeman Jr.

LEE A. FREEMAN, JR.

1030

Ralph G. Dixon

RALPH G. DIXON

We accept and approve the above Agreement on behalf of the plaintiffs we represent and designated class members.

DAVID BERGER
As Counsel for AMHERST LEASING CORPORATION and each named plaintiff listed in Exhibit A attached to the Complaint in the Action entitled Amherst Leasing Corp. v. Emhart Corp., et al., and for the class of owners and builder owners of apartment houses, office buildings, hotels and motels throughout the United States

CITY SOLICITOR
The CITY OF PHILADELPHIA and class members designated in the action brought by the City of Philadelphia

WILLIAM J. SCOTT
Attorney General,
STATE OF ILLINOIS

THEODORE L. SENDAK
Attorney General
STATE OF INDIANA

FRANK J. KELLEY
Attorney General
STATE OF MICHIGAN

WARREN R. SPANNAUS
Attorney General
STATE OF MINNESOTA

ROBERT P. KANE
Attorney General
COMMONWEALTH OF PENNSYLVANIA

CHAUNCEY H. BROWNING, JR.
Attorney General
STATE OF WEST VIRGINIA

BRONSON C. LA FOLLETTE
Attorney General
STATE OF WISCONSIN

EVELLE J. YOUNGER
Attorney General
STATE OF CALIFORNIA

CARL R. AJELLO
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STATE OF CONNECTICUT

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Corporation Counsel
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MICHAEL B. LEWISTON
Attorney for STURDY HOMES CO.

ROBERT L. SHEVIN
Attorney General
STATE OF FLORIDA